

HOW TO SAFEGUARD PART OF YOUR PROPERTY FOR RESIDENTIAL CARE HOME FEES

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Contacts

For further information, please contact your usual Leeds Day contact or

St Neots Office
01480 474661

Huntingdon Office
01480 454301

St Ives Office
01480 464600

Email: wills@leedsday.co.uk

For a full list of our offices and people please visit

www.leedsday.co.uk

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The average cost for residential care in England and Wales is £500.00 per week and anyone who has capital of more than £22,500 is classed as self-funding and will have to meet their own residential home fees.

When a person moves into a residential care home a capital assessment is undertaken to assess what assets they own. Any assets in that person's sole name will be used towards their care. A one-half share of joint assets will also be taken into account. However as regards the person's home, if this is held by husband and wife in joint names and while the other spouse continues to live in the marital home, the value of the house is disregarded for the capital assessment. However if the person who has remained in the marital home dies, then the value of the house is released and will be taken into account in assessing the funding of the care home fees.

If the person who remains in the marital home dies leaving all of their estate (including the house) to their surviving spouse, then all of the capital in the surviving spouse's name will be taken into account in the financial assessment. The resident in the care home would then be liable to pay their own fees until their capital reduces to £22,500.

Disposal of Assets

If assets are given away or otherwise disposed of in order for an individual to try to put himself or herself into a more favourable position and obtain Local Authority funding for their care home fees, the Local Authority may assess that person as if they still had the assets. The Department of Health Guidance to Local Authorities suggest that the timing and motive behind any transfer should be taken into account. Some Local Authorities have won cases even where the person gave away property up to 10 years before they needed the residential care so considerable care should be taken if a gift like this is ever considered as an option.

Recommendation for Couples

Instead of the couple gifting their property to their children in order to try and avoid nursing home fees, they could consider making provisions in their Wills to ensure that upon the first death the deceased's partner's half of the property is placed in trust for their children/beneficiaries rather than passing directly to the surviving spouse. This means that if the surviving spouse then needs to go into a residential home only their own half share of the house is taken into account as the other half is within the trust and cannot be used for the care home fees. The joint ownership of the property would be amended if necessary and Wills would be prepared for the couple to leave their shares of the property into a life interest trust allowing the other spouse to continue living there for the rest of their life.

On the death of the surviving spouse the half share of the property held in the trust can then be given to the children/beneficiaries of the Will.