

My mother has gone into a care home, she has lost capacity, do I have to sell her house after all it is my inheritance under her Will?

An enquiry all too frequently received and there are so many considerations to take into account when a loved one goes into a care home and from so many different perspectives. It is always best to seek advice and assistance where there is question or doubt over the best way to deal with things but this short Q&A will hopefully guide the way....

Who can make decisions?

If the person moving into a care home has lost the ability to make their own decisions, then their appointed Attorney can make decisions for them in their best interests. If they haven't appointed an Attorney, then an application to the Court of Protection can be made to enable someone to assist in their affairs as a Deputy, including dealing with the property.

All decisions must be made by an Attorney or a Deputy in the best interests of the person lacking capacity.

Can I take my inheritance now?

The short answer is no. The Will only takes effect after the death of the person gifting property under a Will. Any gifts under it do not take effect until after death.

Do I have to sell the house?

The Attorney or Deputy has to make best interests decisions. The question should be asked, "is it in mums (and not my) best interests to retain or to sell the house?" If there is no benefit to the house being kept then the house should be disposed of in the best possible way.

There are however a few limited instances where it might be deemed to be in the best interests of a person not to sell a property they are no longer living in and to take into account their wishes and feelings, such as those indicated in a Will. This kind of decision is a difficult one and may cause the Deputy or Attorney to be conflicted in their decision making. In this instance, an application for the Court to seek authority to the course of action should be sought as the most cautious and least contentious approach.

Will the Local Authority force us to sell?

Local Authority assistance for funding towards care fees can be applied for once a person has assets of £23,250 or less. This includes non-exempt property as well as savings. In general terms, if there is a house that is owned by the person who has gone into care that is now vacant and available for sale, the local authority will expect for the capital value of the house to be used before offering a contribution towards care fees.

The Local Authority can place a charge over a property that has not been sold if care fees are not forthcoming to recover fees if the property has been taken into account.

What if the house was transferred to me before she lost capacity?

If (before capacity had been lost) the property had been gifted to someone else within a short period before going into care, the Local Authority may have scope to argue that a deliberate deprivation has occurred. This would depend on individual circumstances but as a general rule, where there is a reasonable contemplation that care might be needed in the near future, any disposal of assets can be disputed and where necessary bought back into account when assessing the local authorities requirement to contribute towards care.

What should I do?

Seek legal advice! We have two teams of experts who deal with these types of enquiries daily. The approach to these matters can differ from individual to individual depending on personal circumstance. Its not worth leaving this kind of issue to chance, get proper advice as soon as possible.

If you need any further advice please contact our Specialist Team on 0800 088 6004