

NHFA Infosheet 5

Deprivation of assets

Many older people today feel let down by the State that promised care from cradle to grave. However, those working closely within the system will already be aware that paying for long-term care is not new. Local authorities have means tested and charged for accommodation since The National Assistance Act 1948 and older people with capital in excess of the income support limits have been purchasing care privately for decades through both Tory and Socialist governments. Today's awareness of the growing number of people having to meet their own costs, apart from strong media attention is made more acute because of the increased number of older people who are also property owners; the closure of geriatric wards; withdrawal of NHS provision and, of course, the introduction of the local authority as gatekeepers with the Community Care Act in 1993.

For most older people their property is their main asset for which they have worked and saved most of their lives. The thought of losing this to pay for care when others who were perhaps less prudent receive free care on the State is, to many, so inequitable that they consider giving it away in case the need for care arises.

What is to be gained by giving away assets to avoid paying for care? This is a simple question to answer: the possibility that the State may pay for one's care, and happy children, friends or relatives who have benefited from the gift.

What could go wrong when giving away assets? It is important to remember that circumstances and relationships can change. Giving away property in a manner which does not enable the person the right to occupy it rent free for the remainder of their lives, or with the retained right to sell and purchase more suitable property as their needs change, would leave the owner in a very vulnerable position. Consider for example if the person to whom the

property was transferred became bankrupt, or the value of the property divided in a divorce court. What would happen if the recipient of the property borrowed against it and as a result any net sale proceeds in the future were inadequate to purchase sheltered or more suitable accommodation which may be needed in the frailty of old age? The security of owning one's own property and the freedom of choice with that ownership is a lot to sacrifice. Similarly, giving away money or other assets may mean that one no longer has sufficient money to pay for that well deserved comfortable life style in retirement without worry.

Should the need for care arise, having given away one's assets, what would the State provide? We are already aware that many local authorities have inadequate funding to provide all the care services demanded. Often in the press, we read of local authorities running out of money or cutting costs by providing services for only the most needy cases. The consequences of older people giving away their assets could mean losing their independence, dignity and right of choice. Each local authority sets a limit as to how much they will pay for nursing and residential care. However, this amount is often less than the normal market rate therefore very much restricting the choice of accommodation that could otherwise be purchased privately if one was in a position to do so.

Putting aside these reservations if a need for care arises in the future and the local authority are asked to pay, one cannot rely on them not identifying that deprivation of assets has occurred. In looking at an older person's means, the local authority will always consider what may have been given away in the past. For this purpose they can look as far back as they wish, and if they identify that assets have been given away partly to avoid accommodation charges, the value of those assets will be counted and treated as 'notional capital'. This is not to be

confused with the rule which enables local authorities to recover care costs from the person receiving the asset if the transfer took place within six months before admission to the care home.

Below is a summary of the rules relating to deprivation of assets taken from the local authority charging procedures. These rules are strictly adhered to in most areas and should not be overlooked.

Regulation 25 National Assistance [Assessment of Resources] Regulations 1992

If the local authority considers that an individual deprived him/herself of a capital asset in order to reduce his/her accommodation charge the following factors should be considered:

1. The nature of the capital asset, i.e. would it be counted as capital in a financial assessment.
2. Whether from available evidence it can be determined that the resident once owned the capital.
3. Has deprivation occurred, i.e.
 - A lump sum payment made to someone else
 - Assets transferred into Trust
 - Title deeds of property transferred to someone else
 - Unusual expenditure of a high amount on extravagant items the resident would not normally purchase
4. The reason for disposing of the capital asset must be considered. Avoiding a charge need not be the resident's main motive but it must be a significant one.
5. When did the disposal take place? The local authority can look at deprivation occurring at any time. However, it would be unreasonable to decide that deprivation had occurred if the transfer took place at a time when the resident was fit and healthy and could not have foreseen a need for a move to residential accommodation.

NHFA Infosheet 5

Deprivation of assets

6. If capital which would have been counted had been converted to acquire personal possessions which would otherwise be disregarded, the value or cost of those possessions is taken into account.

Having decided that deprivation has occurred in order to avoid an accommodation charge, the local authority will need to decide whether to treat the resident as having the capital (this is called 'notional capital') and assess the charge accordingly, and then whether:

- a) to recover the assessed charge from the resident; or
- b) if the resident is unable to pay the assessed charge, to use the provisions of the Health and Social Security Adjudication Act 1983 (HASSASSA).

The relevant provisions of HASSASSA 1983 are:

Section 21 If the transfer took place no more than six months before being assessed by the local authority and admission to residential accommodation provided under part III of the National Assistance Act. The liability for the assessed charge can be recovered from the third party receiving the capital asset.

Section 22 If the resident owns land/property which would not normally be disregarded and fails to pay his/her accommodation charge the local authority can create a charge in their favour on his/her interest in that property.

Section 24 Where a charge has been placed on property the local authority can charge interest on the sum at a reasonable rate 56 days after the resident for whom they provided accommodation dies.

Where a resident has been assessed and treated as having 'notional capital', that capital will be reduced each week by the difference between the charge he/she is paying for the accommodation and the amount he/she would have paid if he/she was not treated as possessing the 'notional capital'. This would continue until his/her 'notional capital' is reduced to the level where he/she would be entitled to full support.

The NHFA, in response to inquiries on this subject, will not recommend that older people should deliberately deprive themselves of their capital assets. In doing so they are also depriving themselves of their independence, dignity and choice of accommodation or care services. Only one in six retired people are expected to enter care homes and if such circumstances arose the options open to them if they have capital are far more flexible than for those without. NHFA experience has shown that through careful financial planning, either by thinking ahead or at the point of needing care, older people can in many cases meet

their care costs without losing all their assets, purchase the level and quality of care they wish for, live in the comfort and surroundings of their choice and still leave some money to their children if they so wish.

Seek Advice

The financial and legal implications to be considered when paying for care are wide, and require careful planning. Older people or their relatives should seek specialist advice, before taking on any commitment that they are unsure of being able to afford. They should seek advice on what their entitlements are from the state, what legal matters they should attend to and how best to use their capital and income to meet ongoing care costs and possible changing care needs.

Taking the worry out of paying for care. NHFA advice is available to all regardless of means. Our aim is to enable older people to afford the cost of their chosen care for as long as they need it.

Since 1992, the NHFA, through its experience specialising in long-term care funding, has developed a range of financial solutions to meet most care home residents' needs. This not only enables care costs to be met but also enables many to preserve as much as possible of their original capital and with that, their independence, dignity, right of choice and, as many older people wish, the ability to leave an inheritance.

Further information and advice on paying for care or free copies of the NHFA Long Term Care Guide can be obtained from:

St Leonard's House, Mill Street,
Eynsham, Oxford, OX29 4JX

Care Advice Line: 0800 99 88 33
Telephone: 01865 733000
Facsimile: 01865 733001
Website: www.nhfa.co.uk
E-mail: enquiries@nhfa.co.uk

Member  Group

NHFA Ltd is authorised and regulated by the Financial Services Authority

NHFA Ltd is registered in England & Wales. Registration No. 04620891

NHFA advice is available to all regardless of means

Infosheet 1	Choice and Interim Finance
Infosheet 2	Treatment of Property
Infosheet 3	The Legal Framework
Infosheet 4	L A Charging Procedures
Infosheet 5	Deprivation of Assets
Infosheet 6	Case Studies / Top Ten Tips
Infosheet 7	Treatment of couples
Infosheet 8	NHS Nursing Care Contribution
Infosheet 9	Inheritance Tax
Infosheet 10	Enduring Power of Attorney

NHFA care advice line 0800 99 88 33
www.nhfa.co.uk