



SAVING THE FAMILY SILVER – ASSET PROTECTION TRUSTS

The costs of long term care are a serious worry for many families. The thought that, if they need to go into a care home in their declining years, their house and other assets could be taken by the local authority to pay for their care, hangs over many people as they get older.

The local authority can demand that your assets are used to fund your care, and can either liquidate them in the case of savings or investments, or take a charge over them in the case of your home, so that when you die the home has to be sold in order to pay off the charge.

An “Asset Protection Trust” (APT) is a way to protect your assets and it offers other benefits as well as sheltering your wealth from the local authority.

A Trust is a legal structure whereby the “legal “ownership of the assets in the trust is separated from the “beneficial” ownership. The “trustees” (normally a solicitor and a trusted friend, or your accountant and a solicitor – there must be at least two of them) legally own the assets such as your home, but they are not allowed to benefit from the ownership. The benefit (such as the right to live in your home) belongs to the “beneficiaries” – who include you, the original owner of the assets.

In day to day life, it feels as if you still owned your house – you continue to live in it, and if you want to move, it can be sold and the proceeds used to buy a new house elsewhere – but the crucial difference is that you are no longer the owner and so the local authority cannot either require it to be sold, or put a charge on it, to pay for your care home fees.

There is however a risk that the local authority can ignore the trust and treat the assets as if you owned them, if they can show that you put them into the trust as an act of “deliberate deprivation” to avoid having to pay for your care fees.

There is a common misconception that this only applies for the first six years after setting up the trust, but in fact there is no such time limit. It is therefore important to be able to show that at the time the trust was set up, you were in good health and had no reason to expect that you would need to go into a care home. The CRAG Report (Charges for Residential Accommodation Guide) states that ‘it would be unreasonable to decide that deliberate deprivation had taken place if the deposit took place when the claimant was fit and healthy and could not have foreseen the need to move into residential accommodation.’

There are other important benefits of an APT, and it will also make it harder for the local authority to allege “deliberate derivation” if you can show that these were also reasons for your decision to set up the APT:

- Sideways disinheritance – this is when your assets do not go to those you would have wished, for example because your spouse remarries after your death, or your child marries and then divorces.
- Bankruptcy – should you become personally bankrupt, your creditors will not be able to get their hands on the assets in the APT – though, rather like “deliberate

deprivation” this will not apply if they can show that you set up the APT at a time when you had reason to fear bankruptcy

- Estranged children might be able to make a claim against your estate after your death, but they cannot claim against the APT

An APT can be a useful tool for protecting your assets for your and your family’s sake, but it is essential to set it up when you are in reasonable health and financially solvent, and to take proper professional advice before doing so.

This article by James Bailey first appeared in Tax Insider magazine (www.taxinsider.co.uk)