

care homes

Introduction

The law relating to care homes is complex and besides the care home owner and the resident often involves other agencies such as local authorities and the NHS in relation to issues of assessment, funding and nursing care. The following is an overview of some of the issues which may affect owners and residents.

Please see our **Elderly Client issues fact sheet** for issues of particular importance to the elderly.

Appealing Decisions of the Care Quality Commission

The First tier Tribunal (Health, Education and Social Care Chamber) deals with regulatory actions relating to care homes, care workers and domiciliary care agencies. These can involve appeals against refusals to register a home or the imposition of conditions on the Certificate of Registration or the cancellation of registration by the Care Quality Commission.

Assessment for Care

Assessing a person's long term care needs is essential not only to identify the care home which may be best suited to them but also to see if they may be eligible for Local Authority or NHS funding. Understanding the assessment process can be crucial to accessing financial assistance.

Borrowing

Care home owners may need to borrow to finance their business. Dependent on the level of borrowing the lender, usually a bank, may want other property or assets besides the business premises to be put up as additional or cross security.

Business Structure

If you are starting a new venture consideration needs to be given to the business structure you will use to operate it. This can be through a limited company or a sole trader or partnership. There are advantages and disadvantages of each type of business structure as well as differing tax consequences.

Buying and Selling a Business

Where the business being sold is owned by a company then one of the key decisions to be made by the seller and the buyer is whether to structure the sale as one of the company's shares or as a sale of the separate assets comprising the business. Each method has advantages and disadvantages as well as differing tax consequences.

Breaching the Certificate of Registration

The loss of its Certificate of Registration could be fatal to a business. Breaches of the licence, including persistent failures to comply with the law or providing unsafe care, can lead to the Care Quality Commission imposing changes of condition of registration, changing registration category or in worst cases applying to cancel the registration.

Care Fee Contracts

Residents need to understand the different elements of the care home charges that they are paying and owners need to ensure that their written statement of terms and conditions complies with the regulations and covers as a minimum:

- The fee and what it covers
- Who is paying the fee (resident, local authority etc)
- What additional services are charged for over and above those in the fee
- The amount of any deposit required
- Rights and obligations of the care home and the resident and who is liable if there is a breach of contract
- The amount of notice required before leaving
- Any charges made after the resident's death

Care Quality Commission (CQC)

In April 2009 the CQC (www.cqc.org.uk) replaced the Commission for Social Care Inspection and the Commission for Healthcare Audit and Inspection. It is exclusively responsible for the inspection, monitoring and regulation of health and social care in England.

Capital Gains Tax

The exemptions or reliefs from Capital Gains Tax available to individuals on the disposal of their business will vary dependent on whether the business is owned as a sole trader, partner or share holder. Consideration must also be given to how reliefs and exemptions, such as holdover relief, rollover relief, entrepreneurs' relief and annual exemption inter-relate as well as their interaction with other taxes such as Inheritance Tax (www.hmrc.gov.uk).

Changes after Registration

Opening new premises or providing a new service or changing the legal structure of the owner (for example from an individual to a company) are all events which could require amendment to your existing registration or a new application for registration. A change of Manager will also require a new application.

Court of Protection and Deputyship

The Court of Protection (www.justice.gov.uk/about/opg) receives applications from family members, carers or friends on behalf of individuals (“patients”) who have lost mental capacity and who have not made an Enduring Power of Attorney or a Lasting Power of Attorney. A successful applicant will be appointed as a “Deputy” and will be given powers by the Court to handle aspects of the patient’s affairs such as finances, accommodation, healthcare and personal welfare. For more detailed information see our **Elderly Client Issues fact sheet**.

Criminal Records Bureau Checks

The Manager or Responsible Person of a care home will need to provide an enhanced Criminal Records Bureau check with their registration application to ensure that they are suitable to work with vulnerable adults.

Enduring Powers of Attorney (EPA)

It has not been possible to make an EPA since September 2007 but those made before then remain valid under the Mental Capacity Act 2005. An EPA enables the Attorney to make decisions regarding the maker’s affairs. Whether it comes into effect immediately or only when the maker loses mental capacity depends on the terms of the EPA and in the case of loss of capacity it must be registered with the Office of the Public Guardian before it becomes effective.

Employment

See our **Employment fact sheet** for the employment issues which may affect you including the need for employment contracts and policies.

Enforcement

See under ***Breach of Certificate of Registration*** above.

Equity Release

Equity release is a term used to describe the two ways, known as Lifetime Mortgages and Home Reversion Plans, by which the value (or equity) in your home can be released to provide a lump sum or income or both. It is one method by which you might fund care home fees but it is not suitable for everyone and professional advice is essential.

Essential Standards of Quality & Safety

These consist of 28 regulations with which registered providers must comply. Each regulation has an associated outcome to measure whether a care home is achieving essential standards of quality, safety and management.

Funding Care Home Fees

Once you have found a care home which is suitable for your needs the biggest concern is usually how to pay the fees. Local Authority support may be available subject to an assessment of your means. If you are not eligible for Local Authority funding you may nevertheless qualify for NHS assistance if you have a

physical or mental health need – see ***NHS Continuing Healthcare and Funded Nursing Care***. If neither of these applies and you are deemed to be self funding you will need to consider what resources you have available. If your home is empty then selling or renting it may be considered. If your partner remains at home then Equity Release is a possible alternative. Each individual’s circumstances are unique and it is vital to get professional advice on the best option for you.

Giving Away Assets

Giving property or capital away to family members to try to make the State liable to pay care home fees is not only in breach of government regulations but also counter-productive as the individual will have lost their financial independence. There are better options available to preserve your assets from erosion. See ***Funding Care Home Fees and Immediate Care Plans***.

Immediate Care Plans (Impaired Life Annuities)

Individuals going into long term care can use all or part of their available capital to buy an Immediate Care Plan (ICP). Professional advice is essential as ICPs are not suitable for everyone but can, used wisely, provide a regular tax free payment to pay all or part of care home fees for the rest of that person’s life (www.societyoflaterlifeadvisers.co.uk).

Information and Safeguarding Authority (ISA)

ISA has responsibility for maintaining the children’s barred list and the vulnerable adults barred list which contain details of all those individuals barred from working with children or vulnerable adults. The work of ISA is due to be merged with the Criminal Records Bureau as the Disclosure and Barring Service in December 2012.

Individuals, Organisations, Partnerships and Managers

Application for registration of a care home will vary depending on whether the owner is an individual, a company or a partnership. If a Manager is separately appointed by the owner a further application will be needed to register him or her with the Care Quality Commission.

Inheritance Tax

Business Property and Relief (BPR) can provide a reduction of 100% (50% in limited circumstances) in the net value of relevant property for Inheritance Tax purposes. Relevant property includes share holdings in unquoted trading companies, partnership interests, the business of a sole trader and controlling share holdings in a quoted company. To enjoy BPR your business must satisfy certain conditions – BPR is complicated and there are many pitfalls awaiting the unwary. It is extremely easy to lose BPR and there is no substitute for professional advice.

Inspection

The Care Quality Commission is responsible for the review and inspection of care homes. An inspection is normally undertaken when a concern has been raised and a risk identified.

Lasting Powers of Attorney (LPAs)

As a care home user it is vital to ensure that you have arrangements in place to ensure that your affairs can be managed for you if you should lose capacity to manage them yourself. See '[Appointing someone to act for you](#)' in our **Elderly Client Matters fact sheet** and also '[Lasting Powers of Attorney](#)' in our list of **Services**.

As a care home provider it is equally vital to ensure that all residents have made appropriate arrangements so that should they lose capacity there will be someone with the authority and ability to ensure that their funds are properly managed, that their fees are discharged and the residents' personal spending needs provided for.

Local Authority Funding

See under [Assessment For Care](#).

Long Residential Leases of Retirement Homes

Some individuals have not reached the stage where they want to go into a care home. However, they may want the reassurance of regular contact with a warden or manager who can be called to help if needed but who will not offer day to day assistance. This type of accommodation usually comes under the heading "Sheltered Housing" and typically comprises self contained flats or bungalows within a complex. The key distinction is that the individual will buy the accommodation, usually on a long residential lease, and the advice of a Solicitor is essential to make sure the paperwork is in order.

Managers

Unless the care home owner is an individual who is also the Manager, a separate application must be made to register the Manager and he or she will be distinct from the Responsible Individual. If the Manager leaves the care home a fresh application must be made to appoint a replacement.

Mobile Homes

Please see our **Mobile Homes & Caravan Parks fact sheet** if you are looking to retire to a park home.

NHS Continuing Healthcare & Funded Nursing Care

NHS Continuing Healthcare is a package of services provided and funded by the NHS for those who have a physical or mental health need. Provided you are eligible, it is free and not means tested but it is not uncommon for the NHS to deny assistance resulting in legal disputes. If you do not qualify for NHS Continuing Healthcare, you can still ask the NHS to pay a contribution to cover the cost of any care provided to you in the care home by a state registered nurse.

Nursing Care Homes

See [Care Homes](#).

Nurses Agencies

Agencies supplying nurses will require registration with the Care Quality Commission, If you also wish to supply domiciliary care staff this will need a separate registration as the regulations and standards are different for the two types of agency.

Planning

Premises will need to have planning consent authorising use of the premises under the relevant category of the Use Classes Order. Further permissions may be required if alterations or extensions to the care home are contemplated.

Prosecutions

In addition to civil powers (see Enforcement) the Care Quality Commission can issue a formal caution or bring a prosecution if it believes a criminal offence has been committed such as operating a service without registration. This can result in a fine or imprisonment on conviction in the Crown Court.

Registration

The Care Quality Commission is responsible for approving and granting registration to persons or organisations providing or managing care homes. Applicants must provide various documentation and statements and be able to demonstrate that they are suitable to provide or manage the service, and the proposed service is suitable to meet the needs of those who will be using it. It also considers the fitness of the person or persons applying, fitness of the premises and fitness of service and facilities. An enhanced criminal records check is undertaken on the person applying and the registered person will have to undertake such checks on all staff that they employ.

Regulated Activities

Care home providers are required to register with the Care Quality Commission the "regulated activities" which they intend to provide. Accommodation is treated as a separate regulated activity so a care home wishing, for example, to provide personal care and nursing care would apply to be registered for three regulated activities namely the accommodation, the personal care and the nursing care. In addition applicants for registration are required to specify in more detail the type of service being provided and the intended users. Care homes may choose to specialise in particular types of care e.g. mental health, dementia, substance abuse, learning difficulties etc.

Responsible Individual

The care home owner, which could be a partnership or company, must nominate a "Responsible Individual" to represent the organisation. The individual must be a senior member of the organisation who is responsible for supervising the management of the service and will have to be able to show that both the individual and the organisation meet the fitness requirements for registration.

Service Charges

If you have purchased a lease of your own retirement accommodation (see Long Residential Leases of Retirement Homes) you will almost certainly be responsible to pay service charges. These charges, which are in addition to rent and designed to cover the landlord's cost of providing services under the lease, can vary significantly from development and can give rise to disputes.

Sheltered Housing

See Long Residential Leases of Retirement Homes.

Stamp Duty Land Tax

Stamp Duty Land Tax ("SDLT") is the self assessment tax which replaced the old stamp duty for property purchases from December 2003. Historically, documents were "stamped" with the level of duty paid whereas now a Return must be sent to the Revenue with the appropriate tax payment. SDLT is calculated as a percentage of the purchase price ranging from 1% for purchases above £125,000.00 (£150,000.00 for commercial premises), 3% above £250,000.00, 4% above £500,000.00 and 5% above £1,000,000 from April 2011 (residential properties only). A purchase for £250,000.00 means tax of £2,500.00 whereas one penny over £250,000.00 means tax of £7,500.00. With commercial properties where VAT is paid on the price, SDLT is payable on the VAT inclusive figure – tax on tax. With leaseholds, the calculations become even more complex.

Wills

See our **Elderly Client Issues fact sheet** for detailed information on Wills and Trusts.

How can Powells with Chawner Grey help?

We can assist if you are looking to buy or sell a care home as well as helping you with legal and business issues as they arise during your ownership. For advice, contact:

Glyn Evans on 01934 637 911, e-mail evans@powellslaw.com or
Stephen Soper on 01934 637 915 , e-mail soper@powellslaw.com or
Tony Roost on 01934 637 903 , e-mail troost@powellslaw.com.

We can also advise residents or prospective residents on the range of matters which need consideration both before and after moving into a care home. For advice, contact:

Ian Shipton on 01934 637 904, e-mail shipton@powellslaw.com or
Jenny Brading on 01934 637 931, e-mail brading@powellslaw.com.

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