

Your Legal Questions

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Q I wish to try and protect my savings against future care home fees. I was considering either giving away my property or making a large gift but I have been told that this may be seen as deliberate deprivation of capital. What does this mean?

A If you move into a care home and ask the local authority (LA) for assistance with paying the fees the LA will carry out calculations using both your income, savings and other capital to assess what contribution you and they should make. As part of this assessment the LA can look for evidence of deliberate or intentional deprivation of assets. Deliberate deprivation occurs when someone gives away an asset to put them in a better position regarding the means test for care home accommodation.

Examples:

- Giving property to someone else or selling at an undervalue.
- A large gift from savings.
- Setting up a trust fund that cannot be revoked.
- Deliberately reducing capital on excessive holidays or extravagance.
- Converting savings into assets that are normally disregarded such as investment bonds or expensive personal possessions.

There is no time limit to these rules. If the gift was made with a view to deliberate deprivation then it doesn't matter how long ago it was made. In certain circumstances the LA may be able to recover the asset from the person to whom it was transferred and may refuse to fund the person in the care home. Additionally there are many tax consequences for both parties. If you give away your home you will not be able to raise any capital against it and what if you wish to move?

I suggest that you exercise great caution and obtain legal advice before taking any further steps.

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