

Call Stoke-on-Trent (01782) 639716

## Long Term Care - and defending your assets

*A Guide provided by Rod Jones of Convenient Wills*

### 1 Welcome

Thank you for requesting this guide. I hope you find it helpful and informative.

In an ideal world it would be so simple if each individual aspect of a person's estate could be viewed in total isolation from the rest. In reality, as every professional estate planner knows, it is not possible to consider in complete isolation any one specific aspect. As one element is changed there will be an impact upon other aspects too. For this reason when undertaking an estate planning review it is most important that a `holistic` review is undertaken, whereby all aspects of the estate are repeatedly assessed with the aim of ensuring all elements (that is the important ones, the less important ones, and the unimportant ones) are - and will continue to be - all within acceptable tolerances for the client.

As this guide focuses on just one aspect of an estate, and no account can be taken of the impact upon the other aspects that relate to your individual circumstances, this guide must be regarded as an information tool, and nothing more -- for if you undertake any of the options listed you may unwittingly detrimentally affect other aspects of your estate in the future. The guide's purpose is to equip you with information about the topic so that you can then use this information when discussing your affairs with a professional adviser -- at which time you can verify the information contained in the guide and qualify any implied recommendations it contains.

This report is provided on that basis. We regret we cannot accept any responsibility or liability for any adverse outcomes for you or your family, no matter how caused. In addition, we do not accept any liability for any mistake, error, or omission from this guide. We take great care to ensure the technical accuracy of these guides and reports but, despite our best efforts, mistakes can occur and the laws relating to estate planning can change (and often do so with very little notice).

This guide is one of a number of guides and reports available from our web site [www.convenient-wills.co.uk](http://www.convenient-wills.co.uk); they cover a wide range of aspects dealing with estate planning in general, and making your Last Will & Testament and Lasting Powers of Attorney in particular.

All our downloadable guides and reports use hyperlink technology. This allows you when reading the document direct from a computer with access to the Internet, to click on a hyperlink (indicated with blue, underlined text) and you will be taken through to the appropriate article. Please note that the guide is not designed to be printed off; if you wish to print off the guide please [contact us](#) and we will send you an amended version.

If you require further information or clarification on any aspect of this guide then please do not hesitate to contact me. I will be only too pleased to help.

And finally, as you read this guide you may realise that it would be a lot easier, quicker, and simpler for a professional to just get on with making your Will for you. We would like to help. Please [click here](#) to read the full features and benefits of our home visit service, or [click here](#) to register your interest (without obligation) in our services.

*Rod Jones*

Rod Jones A.C.I.B.  
Proprietor of **Convenient Wills**

## 2 Overview

The funding of long-term-care in England and Wales is an emotive subject; a political 'hot potato'.

One reason why the topic is so emotive is that people who have not saved during their lives receive the same level of long-term care as those people who have saved (and in many cases gone without other luxuries to do so.). As a consequence, those who have worked and saved their whole lives for their property they now own now feel their prudence and sacrifice of earlier years is not rewarded as they often have to sell their property to pay for their own care. Those who have no savings make no contribution.

With some care homes charging £25,000+ a year many people are concerned that their assets (and in particular their property) will be sold and used to fund their care needs. The effect will be to divert their estate to funding their care - rather than it being passed to their children in the form of an inheritance (which is what most people would prefer).

Many people are looking at ways to protect their property for their children.

The purpose of this guide is to:

- ♦ highlight ways that have historically worked to protect people's assets from being used to fund Long-Term Care fees; and
- ♦ share with you traps that you should avoid in your attempt to protect your property.

## 3 Glossary

- ♦ **Long Term Care:** the name given to the type of care a person experiences when they go into a care home. Often abbreviated to LTC
- ♦ **Deliberate Deprivation:** the name given to the act of deliberately distributing the wealth of a potential Long Term Care resident so that should care be required the resident will have less funds available of their own to fund their own care - with the consequence that Social Services will have to pick up the 'tab' themselves.
- ♦ **Care Homes:** the modern name for Residential Homes (the change taking place in 2002)
- ♦ **Mental Capacity Act 2005:** The latest major Act of Parliament to set out the rules and regulations governing mental capacity and mental illness.
- ♦ **Nursing Homes:** the modern name is 'Care Homes Registered to Provide Nursing', or 'Care Homes With Nursing'.
- ♦ **Residential Homes:** Officially called Care Homes today.

## 4 Statistics

Statistics suggest that:

- ♦ One in 5 or 1 on 6 men will spend some time in a Care Home;
- ♦ One in 3 women will spend some time in a Care Home;
- ♦ Full care is presently costing around £25,000 to £30,000 per annum
- ♦ In England and Wales you are expected to pay for your own care if you have assets greater than £23,000 (w.e.f. 2011)
- ♦ Around 40,000 homes per annum are sold to fund long term care.
- ♦ Deliberate deprivation of assets is assessed by Social Services; they have an unlimited timeframe time to find evidence of deliberate deprivation of assets.
- ♦ The average time spent in a care home is, we understand, around 18 months.
- ♦ A surprisingly high proportion of people do not 'survive' in care longer than the initial first 12 weeks - the property is excluded from the means tested calculations for this duration. The reason why the average is 18 months is because people with dementia can survive 10+ years.

## 5 Do You Need To Worry?

From the statistics above there is a calculable probability that you, or your spouse, or both of you if you are married, will spend some time in a Care Home. But do you need to worry about losing your house to fund long term care?

- ♦ Is your pension big enough to fund the care? If it is then no further action is required as your pension will pay for the care costs. Few people though will have a pension of sufficient size.
- ♦ If your pension and investment income is sufficient to pay your care costs then again the answer is 'no, you do not need to worry'.
- ♦ If the spouse of the Care Home resident continues to live in the matrimonial/family home then the matrimonial home will not be included in the means-tested calculations.
- ♦ If a close relative aged 60 or more continues to live in the family home (e.g. A son or daughter or a parent.) then the property is excluded from the means-tested calculations. The argument presumably being that if the relative is a child then the child will have provided support for their parent until the very last moment. If the relative is the parent of the person going into care then to forcibly sell the property will create further problems and a drain on the resources of Social Services and therefore it is easier to disregard the property.
- ♦ If a relative who is under 60 and is incapacitated and lives in the same property - then the property is again disregarded from the means-testing asset calculations (and thus protected) - presumably for the same reasons as listed above.

If your circumstances do not meet the above criteria then the matrimonial/family home will be included within the means-testing asset calculations - and therefore potentially at risk of being forcibly sold to fund care costs.

You may therefore wish to explore other options.

## 6 Deliberate Deprivation ...

Social Services will start to contribute towards the fees of a resident in long-term care when the estate value of the resident drops below £23,000 or so. Where the resident's estate falls below £13,000 or so then Social Services will contribute the majority of the costs. You can see therefore that if a person is able to reduce their estate to below the Social Services threshold then the responsibility for paying fees is transferred to Social Services from the resident.

Social Services are very much aware of the tricks that many people have used in the past to reduce the value of their estate. To protect Social Services legislation in the form of Care in the Community Act 1990 introduced the ruling that allowed Social Services to take action where a person deliberately tries to reduce their estate with a view to protecting their property and assets from being used to fund their care costs in the future. These people are now deemed to be deliberately depriving Social Services of assets they [Social Services] could otherwise use to fund a person's care.

Many people think that the solution [to protecting their property from being used to fund long-term care costs in the future] is simple... Dispose of your assets now so that when you need to go into care your net worth is below the threshold set by Social Services at that time. This means giving away your property and savings now. However, evidence has shown that this course of action is highly risky.

Care in the Community Act 1990 gives Social Services the power to demand that the beneficiaries [of the assets given away] then pay for the resident's care costs.

That however does not mean to say that there is no effective ways to protect your property from funding care fees, although the historically simple method of giving away the property to [say] the children is unlikely to work today.

Effective protection of the property [from being used to fund long term care] nowadays has been achieved as a side effect of some other course of action. Many of the trusts included in a person's Will for say inheritance tax planning or protection against disinheritance have subsequently proved effective at protecting the property from being used to fund long-term care.

Likewise, where the whole of a couple's estate has been placed into any family trust -- with a view to save Probate fees -- then this action has also proved effective at protecting the assets from the clutches of Social Services.

So we know that certain trusts are an effective defence in certain circumstances.

There is no guarantee the trust clauses that have worked historically will continue to work.

## 7 Other Ways To Protect Your Property

Apart from the aforementioned trusts (e.g. The Protective Property trust) some people have successfully protected their assets by investing their monies in an investment bond with a life assurance element. Whether this still works, and what [if any] special action was required we do not know. We recommend you seek advice from an experienced financial adviser for more information.

## 8 The Impaired Life Annuity

Another option to consider is to purchase an impaired life annuity.

If the house has to be sold then rather than leaving the cost of the care open (i.e. Will care funding be needed for 1 month, 1 year or say 12 years? You simply don't know.) you purchase an 'impaired life annuity' that will provide an income sufficient to cover the care home fees both now and in the future. This impaired life annuity could be purchased from part of the sale proceeds of the property or the residents savings and investments.

The 'impaired' of 'impaired life annuity' reflects the seriousness of the illness that has caused the person to go into care in the 1st place. If the resident is expected to have only a short period of time to live the lump-sum premium required to purchase the benefits required will be smaller than say a case where the resident is expected to live for many years - for the same level of benefit.

This option, while initially expensive, does crystallize the cost of care. This is worth exploring.

## 9 NHS v. Social Services

In many cases the type of care a person needs is easy to identify, and therefore it is easy to determine if the care should be provided by the NHS or Social Services.

In some cases the boundary of responsibility between the two services is less clear. Is the underlying condition caused by an illness, or just infirmity due to getting older? It is important to determine who is responsible though. The reason for this is because all the services provided by Social Services are means tested (which means that all assets are at risk of being used to fund the patient's care) whereas those **services provided by the NHS are free.**

Your objective should always be to get the NHS to accept responsibility for the care, and therefore they will incur the costs without any comeback on the assets of the patient.

As previously explained, where care is being provided by Social Services then if the resident/patient has assets of greater than approximately £23,000 the resident is expected to pay for their own care. If their assets are below £23,000 but above £13,500 they will be expected to make partial payment towards their costs.

We continue to hear of stories where the NHS appears not to accept its responsibilities; you may need to fight your corner. Vascular Dementia for example, is one common example where a complex matrix scoring system is used to defend the NHS's reasons to decline support.

## 10 Tricks of the [Care Home] Trade

We have become aware of a trick operated by some care homes. Look out for this ...

- ♦ The Care Home owners suggest the resident (or their attorney) transfer the resident's existing home to the owners of the Care Home; their argument being that in so doing this will ease the sale of the property process and stop the care home chasing the relative/attorney for their fees. The argument can be persuasive. However, as highlighted above, many people do not live for long after they have gone into a care home. The end result is that often the care home gain the value of the resident's property (all 100% of it) at a total cost to them of providing a couple of weeks of care.

## 11 Traps To Avoid

We often hear of schemes that people have put into place to avoid their assets being included in the means-testing calculation. e.g.

- ♦ **Gifting your house to your children whilst alive.** Unfortunately this tactic usually fails the 'Deliberate Deprivation of Assets' test because when asked by Social Services 'Why did you forego the peace of mind of owning your own home?' the only obvious answer was 'To avoid paying care fees.' The outcome: the beneficiaries will then be responsible for paying your care fees.

The second risk to this tactic though is if your children find themselves in a financial mess; creditors and the receiver in bankruptcy can pursue repayment from your children's assets - including your house (which of course they own now that you have transferred it to them.). And what would happen if your child subsequently divorced? Your property, as an asset of the child, would form part of the divorce settlement!

The third disadvantage is the potential tax gain on the property. All the reliefs that apply to people living in the home do not apply to children who live elsewhere. So when your children come to sell the property they could be 'stung in the tail' by a Capital Gains Tax hit (and in some cases by Inheritance Tax too)

- ♦ **Gifting a part of your property to your children.** Though not quite as risky as the above example this tactic can still be tripped up by the same three disadvantages listed above.

## 12 What Else To Consider

### Lasting Power of Attorney

The ability to make your own decisions can be lost due to serious accident, mental illness, or dementia. The consequences can be significant inconvenience for the family. If the person [who has lost their mental capacity] has not nominated anyone to act on their behalf then the control of their financial affairs passes to the Office of the Public Guardian; they will in due course nominate someone to take control - sometimes a local solicitor.

The solution is to appoint someone you trust whilst you have mental capacity to do so. This is done by completing a Lasting Power of Attorney. (LPA).

In the LPA you can stipulate what powers your attorney is to have.

The LPA replaced the EPA (Enduring Power of Attorney) in October 2007. The LPA is marginally more secure than the EPA - in that it has to be registered with the Office of the Public Guardian before the attorney can use the document. The EPA must be registered when the donor is deemed to have lost their mental capacity.

If you have split the tenancy of your property between yourself and your spouse/civil partner (to Tenants-in-Common) then you really should make an LPA. The reason is that to sell your property the Land Registry will require two signatures - one for each owner. If you/your spouse/your partner have lost their ability to look after their financial affairs then the only solution is to go through the Courts to arrange the sale - an expensive and time consuming option.

### General Power of Attorney

One drawback to the LPA is that it must be registered with the Office of the Public Guardian before it can be used by an attorney. So what happens if you are of sound mind but [say] fall over and damage your writing hand and, whilst recovering, you need someone to make decisions on your behalf? One solution is to make an Ordinary Power of Attorney.

This document, like the LPA, will hopefully never be required. But if ever you need someone to make decisions on your behalf you will be grateful you put into place this document.

### 13 More Information

- ♦ **Age Concern** provide a wide range of downloadable fact sheets on a wide variety of topics. They have in-depth articles on funding long term care, and how your property will be valued for the assessment purposes.

Visit their web site at: [www.ageconcern.org.uk](http://www.ageconcern.org.uk)

- ♦ **The Alzheimers Society** have a very informative web site that explains all about the disease and the care facilities available.

There web site is at: [www.alzheimers.org.uk](http://www.alzheimers.org.uk)

- ♦ You may also find the following guides available from our own web site useful:-

- ♦ ['Trusts, Traps and Wills'](#) -- a guide to some of the trusts contained within people's Wills and how they work;
- ♦ ['LPAs, EPAs, The OPG and the COP'](#) -- which explains about Lasting Powers of Attorney, Enduring Powers of Attorney, the Office of the Public Guardian, and the Court of Protection.

### 14 Make A Will

It goes without saying that all adults should have an up-to-date will.

(Incidentally, if a person does lose their mental capacity then they also lose their ability to make their own Last Will and Testament. The only solution then is to apply to the Court of Protection for a statutory Will. This is expensive.)

**Convenient Wills** would like to help you.

Making your will can be time consuming and relatively stressful. The more you research into what should be included in a Will the more you realise there is yet more to learn. And even when the task is done you may have nagging doubts about its legality and validity if you have not used the services of a professional.

Using a professional will-writer can be quicker and more cost effective in the longer run.

**Convenient Wills** is the only home visit, specialist Lasting Powers of Attorney & will-writing business located in Newcastle-under-Lyme that covers North Staffordshire, South Cheshire and North Shropshire.

**Convenient Wills**, as a specialist home-visit will-writing service, offers you:

- ♦ **convenience:** we come to your home, thereby saving you travel costs, and time;
- ♦ **flexibility:** our appointments are held at times convenient for you, including daytime, evening, and at the weekend. There is no need for you to take time out from work;
- ♦ **a relaxed atmosphere:** the discussions are held in the comfort and relaxed atmosphere of your own home -- and not in an 'oppressive' office in your local (or not so 'local' in some cases) town;
- ♦ **time saving:** our experienced and friendly consultant will advise and guide you through all the options you should consider -- thus eliminating the need for you to undertake any prior research, such as searching the Internet or library to see what you should include;

- ♦ **a bespoke will:** your Will will be legal and personalised to match your exact wishes. This means, for example, that the names of your children will be included in your will rather than just referring to them as your 'children'; and we will draft your will to match your wishes rather than making your wishes fit into one of our pre-formatted template wills.
- ♦ **a fixed fee:** We do not charge extra for the inclusion of, say, a trust in your will (Unlike some of our competitors). Nor do we increase our fees if we feel you can 'afford' to pay more; and
- ♦ **protection:** our processes (which includes visiting you twice) ensure your Will can be defended from claims of lack of capacity, undue influence, and fraud.

The full features and benefits of our home visit will-writing service is available on our [web site](#). To register your initial interest (without obligation) in our services just [click here](#).

Not all will writing services are the same.

No one likes to consider their demise; we though make the task relatively simple. If you would like to join our existing and growing group of satisfied customers please call Rod on:

(Stoke) **01782 639716** or click on

[www.convenient-wills.co.uk](http://www.convenient-wills.co.uk)

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We hope you have found this fact sheet informative. If so then please feel free to share it with others.

More information and helpful, informative guides are available from our web site, or by calling us direct.

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