Legal Adviser

The Newsletter of Wrigleys Solicitors

November 2013

Welcome

A warm welcome to the latest issue of our newsletter. When we're deciding its content, we discuss amongst ourselves the topics that have been 'top of the list' for clients over the last few months. Listening to our clients and their concerns is very much part of our approach at Wrigleys, so that we can make sure that the services we offer reflect your needs. We also want to ensure that you are aware of any changes in the law which may affect you and your family.

This issue we're addressing the issues raised by equity release – an area where making sure clients are fully aware of all the implications is part and parcel of our service. You'll also find some answers to questions we're often asked about Lasting Power of Attorney – and we'll feature more of these questions and answers in future issues.

We hope you find it interesting and informative!

Lynne Bradey
Head of Private Client Team, Sheffield

Vulnerable beneficiary trusts - changes now in force

The Finance Act 2013 has tightened some of the tax rules that apply to trusts set up for the benefit of disabled and vulnerable beneficiaries and has also changed the definition of 'a disabled person'. The intention is that the inheritance tax treatment of these trusts is in line with the treatment for income tax and Capital Gains Tax.

A trust for a qualifying 'disabled person' can benefit from special inheritance tax treatment. It is usually set up as a discretionary trust during lifetime, or on death, taking effect under a will. The trust document will give the trustees wide and flexible powers during the disabled beneficiary's lifetime. The trustees will also have powers to make payments to other beneficiaries, for example family members.

One of the qualifying conditions for this special inheritance tax treatment is that the trust deed (or will) must secure that, during the lifetime of the disabled beneficiary, at least half of any capital payments (if any) made by the trustees must be for the benefit of the disabled beneficiary. This has been changed so that, during the lifetime of the disabled beneficiary, all capital payments and income payments (if any) must be for the benefit of the disabled beneficiary. This brings the inheritance tax treatment into line with the income tax and CGT treatment.

The limited exception is in the form of an allowance that, in any tax year, the trustees may pay the lesser of £3,000 and 3% of the maximum value of the trust fund during that tax year to, or for the benefit of, other beneficiaries. This exception will also apply for income tax and CGT special treatment. This may raise difficult valuation issues for trustees of some smaller trusts. Note that any unused allowance cannot be carried forward.

Fortunately, these new rules don't apply retroactively to trusts set up before 8 April 2013 or contained in wills made before that date. However, clients who want to amend those trusts, or update their wills (even, for example, by simply changing their executors), should take advice on the new arrangements if the trust or will makes provision for a disabled beneficiary.

Peter Clarkson Solicitor

Unlocking the capital in your home

The pros and cons of equity release

With the continuing rise in the cost of living, the concept of equity release is under consideration by an increasing number of homeowners. Elderly couples in higher value homes are the sector most often thinking about taking up such schemes. Their aim is to stay in the homes they know and love and to boost their income to help with day to day living costs and property maintenance.

The appeal of equity release may, however, become more wide ranging. The anticipated deficit in government pensions alongside the apparent lack of adequate retirement planning, mean that the next generation are considering their options.

Impartial advice

Here at Wrigleys, advice on equity release arrangements can form an important part of our financial and asset protection discussions with our clients. We believe our clients need to know the options and the impact these choices have both for themselves, and for their families. Some of our clients have already scanned the internet for information on whether equity release is the right option for them and found that there are plenty of images of sunshine, blue skies and smiles but there is a scarcity of impartial information. Much of the information available has been prepared by the companies providing equity release schemes, and while many financial providers do all they can to fully inform their prospective customers, some tell only half the story. That's why a discussion with a solicitor can be invaluable.

The key issues to consider

We take an individual approach to each client, but generally speaking for each client who consults us about asset protection and equity release our advice will include some key issues.

First of all we will explain the process and highlight the advantages and disadvantages. We also then review the alternatives. These could include downsizing to a smaller home, releasing nest eggs such as premium bonds or savings, tracing private pensions or lost investments, identifying whether funding is available from the state or other sources to renovate your existing property, or to improve running costs.

We outline the impact equity release will have on the value of your estate and we encourage discussions between family members and beneficiaries with the Inheritance (Provision for Family and Dependants) Act 1975 in mind. We make sure our clients understand what happens after their death if they have taken out an Equity Release scheme, and what assets, if any, will remain to be shared among beneficiaries. We will also prepare or review your will and identify your beneficiaries and dependants.

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We discuss any future care arrangements you may need. None of us knows what the future may hold in terms of our own health, but it helps to discuss the possibilities. For example what would happen if you decide on equity release, receive a boost to your income and then find that you become ill or disabled and cannot live in the home you have just mortgaged? You may need to move into a residential or nursing home and find yourself ineligible for state help because of your enhanced financial position after equity release. There is much to consider!
We provide guidance on your entitlement to benefits. As a result of an increase in your capital ie you become 'richer' in cash terms, your entitlements to income support and council tax benefits may be reduced immediately or in the future. Entitlements to other state benefits such as free dental and optical care, could be forfeited - and remember the rules on eligibility for benefits could change in the future.

Analysing the lending arrangement

These are the factors we will consider when we look at the details of any scheme you are thinking about.

- Your ability to retain full home ownership and to move house with or without repaying the mortgage
- Your ability to continue to occupy the property for as long as you want to do so
- The effect on your eligibility for social security benefits and the potential impact on your tax position
- The effectiveness of a 'no negative equity guarantee' and the risk of eroding all equity in the property
- The suitability of the level of capital released in view of your future needs and the percentage of the value of the property that this reflects
- Future change of personal circumstances (e.g. separation, divorce or inheritance).

Being aware of the lender's rights

It is essential that anyone considering equity release understands the terms and conditions of the arrangement and the lender's ability and right to take action to repossess the property in circumstances which may include:

- The property falling into disrepair
- The non-repayment of a mortgage within 12 months of leaving the home due to death or long term care needs
- The non-occupation of the property for a continuous period of 6 calendar months without prior agreement but not due to long-term care requirements
- Bankruptcy or the entering of a voluntary arrangement with creditors
- The appointment of a receiver/deputy
- The property is made the subject of a Compulsory Purchase Order

Without a doubt the immediate and future implications of equity release will have a far reaching impact on those who choose this route and on their family members. Our role is to enable clients to consider all the options and their impact. It is for the individual to decide whether equity release is the right course for their individual circumstances.

Julia Watkinson Head of Property, Sheffield

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Just ask...
about Lasting Powers of Attorney

We have discussed the advantages of Lasting Powers of Attorney in previous issues of the newsletter. Here we highlight some of the questions that often come up in our discussions with clients.

Q: "If I become too ill to make my own financial decisions, surely my family will sort things out without having to have Power of Attorney?"
A: Unfortunately not. Financial institutions cannot take instructions from your spouse or children about assets that belong solely to you.

Q: "I've made my will properly, and appointed executors. Don't they have authority to act on my behalf if I become ill or incapacitated?"
A: Your will and the appointment of any executors only take effect upon your death. The opposite is true of attorneys, who act on your behalf during your lifetime if you are too ill or incapacitated, but their power ceases immediately on your death.

Q: "I am my mother's appointee. Does this mean she doesn't need to make a Lasting Power of Attorney?"
A: Being an 'appointee' relates only to money received from the Department for Work and Pensions, for example State Pension, Attendance Allowance and all other benefits. It does not give you authority to deal with any other assets.

Q: "My elderly mother is in hospital and it looks like she won't be able to go back home as she lives alone. Her household bills are mounting up and need to be paid from her bank account. How long will it take for me to become my mother's attorney so that I can do this on her behalf?"
A: The Office of the Public Guardian can take up to 10 weeks to process an application. This includes the statutory waiting period of four weeks so that any objections can be received and considered. Sooner rather than later is our advice in applying for LPAs!

Emma Irons & **Peter Clarkson** Solicitors

"Wrigleys Solicitors offer the preparation of Lasting Powers of Attorney on a fixed fee basis. Call us on 0114 267 5588 to discuss how we can help you prepare for the future."

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