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SOLICITORS

## Gifts of Property and Money.

*By Phil Robinson, Head of Residential Conveyancing*

**My elderly Mother wants to gift one of her investment properties to me, as part of organising her affairs and undertaking some lifetime planning. Is there anything which I need to be careful of?**

This issue is becoming increasingly common with parties wishing to organise their affairs, to try and make the administration process easier for their family before they die and as solicitors this is an area which we are very happy to assist with.

The first comment to make, is that as individuals in England and Wales, we are free to dispose of our assets as we wish. However before doing so, to protect all parties involved, a solicitor and any other professional advisor must carefully check that the person making the gift has the mental capacity to do so and is not subject to any undue pressure. Your Mother will therefore need to meet with the solicitor on her own, and her ability to legally transfer the asset will be assessed at that meeting. It should also be continually reviewed and considered during the course of the transaction.

As part of lifetime planning, you and your Mother would also be advised to discuss this with either your accountant or a financial planner. Albeit that the transfer of the property would be a gift, your Mother may also be subject to capital gains tax and the family should also receive advice in respect of the Inheritance Tax implications of making a lifetime gift. The gift of property to a family member may also impact on their Stamp Duty Land Tax position going forward, and they may lose certain reliefs if they already own an interest in secondary property.

The future financial needs of your Mother, should also be considered, particularly in relation to any potential future care home fees or state assisted care. The disposal of an asset during sometimes lifetime could potentially be considered an attempt to deprive yourself of an asset to claim state assistance and may result in state assistance being reduced or refused.

Therefore the implications of any gift, particularly of a property, should be carefully considered in conjunction with your solicitors and financial advisors, and this advice is not only for the person making the gift but the advice should also include the wider implications for the whole family.

**My son is buying a house with his partner, and I am gifting him the deposit. Is there anyway to ring fence this gift to protect it for my son, should he and his partner split up.**

When two or more parties buy property together, if they are putting in different contributions towards the purchase price they would be advised to enter into a Declaration of Trust. This declaration is an agreement between the parties, as to who owns what equity in the property and when the property is sold can clearly define how the sale proceeds are distributed.

The declaration can also consider any future plans for the house, such as renovation works, uneven contributions towards the mortgage and even define an agreement, as to how the property would be sold in the event one party wishes to leave the arrangement. Careful consideration of this issue should be part of any house purchase and as solicitors we would be happy to discuss this with and your son.

