

KEY FEATURES AND BENEFITS 30

Main residences and IHT

CONCERNS

- ❗ The main residence is often the most difficult asset to deal with when planning for IHT purposes.
- ❗ The client would like to reduce Inheritance Tax (IHT) and the value of the home is creating or contributing to the IHT problem.
- ❗ The Gift with Reservation of Benefit (GWROB) rules restrict the available options to clients, as it is the main residence and the client is living there, so clearly benefitting.

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OPTIONS

OUTRIGHT GIFT

One option could include an outright gift to individual(s). This is a Potentially Exempt Transfer (PET) but **involves the client paying the full market rent for continued** occupation to the gift recipient(s) to avoid the gift being a GWROB.

- ✅ A conveyance between the parties would be required.
- ❗ The gift would be in the estate of the recipient from day one but still in the donor's estate for IHT purposes for seven years.
- ✅ After seven years the gift would be out of the estate for IHT, as long as the GWROB rules were not breached.
- ❗ It is not usually possible to include any Trust work, other than in the case of gifting equity and retaining title as below (where specialist advice should be sought).

GIFTING FROM EQUITY RELEASE OR MORTGAGE

- ✅ Equity can be released from the property and then gifted to an individual (PET) or to Trust (CLT, so limited to the Nil Rate Band without incurring immediate entry charges).
- ❗ The arrangement of a mortgage or equity release would require authorised financial services advice.
- ✅ Survive seven years and as long as no benefit has been retained from the gift, it will be out of the estate for IHT.

CONCESSIONS TO THE GWROB RULES

Normally by giving an asset away and retaining a benefit (as would be the case with the main residence, as the person lives in the house) would be a Gift with Reservation of Benefit. This would mean that from an IHT point of view, the house would still be in the estate, unless the full market rent has been paid, as above.

However, there is an exemption in law where the person making the gift (donor) and the recipient (donee) live in the same house.

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FINANCE ACT 1986 SECTION 102B(4)

- Gift of an 'undivided share'. So either 'solely' owned or 'tenants in common'. Not 'joint'.
- Donor does not receive any benefit at the expense of the donee.
- This would be a Potentially Exempt Transfer (PET) so the gift starts the seven year clock.
- The donor must contribute at least the proportion of equity retained but can contribute more or all. The donee must not contribute any amount towards the outgoings over and above the equitable share held. This may be effective retrospectively if the historical facts support the arrangement.
- A conveyance would be required between the individuals (or a Declaration of Trust over equity if there is a mortgage).
- The gifted share would be in the estate of the donee from day one.
- Donor and donee both 'occupy' the land (e.g. it's the family home).
- The exemption found at **s102(B)(4) of the Finance Act 1986** states that as long as an 'undivided share' (that is, solely owned by the donor or a share held as tenants in common) is given away, it is not a Gift with Reservation of Benefit – so the seven year IHT clock can start and no rent has to be paid.
- A specialist bespoke estate planning report would be required to evidence the work. We can produce this for the client.
- Trust work is not possible (over and above any Declaration of Trust as regards the transfer of equity between donor and donee), as the gift must vest absolutely in the recipient's estate.
- The gift would remain in the donor's estate for seven years as a PET.