As the population grows older and cares homes are an issue for more and more people, a growing number of people look into giving away their property during their lifetimes in the hope of avoiding it being sold to pay for their care. This is major decision, and should not be taken lightly. Here Sarah Thiede, Director at Malcolm C Foy & Co solicitors, details the possible impacts of property gifts, both positive and negative

Benefits of gifting assets

If you choose to transfer your property to a family member or trust during your lifetime:

- There may be savings in relation to Inheritance Tax and administration costs upon your death.
- You may avoid the need to sell assets to pay for care fees.
- The asset may not be taken into account if you have to undergo means testing for benefits or publicly funded services.
- You may be relieved of the burden of responsibility for the asset.
- It may reduce delays in processing your estate on your death.
- There may be savings in both time and expense in applying for a court order from the Court of Protection in the event you lose mental capacity and there is no relevant power of attorney is in force.

Risks in transferring property

Among the risks involved are the following:

- The value of the home may still be taken into account for funding long-term care. There is no foolproof way of avoiding your assets being taken into account for care funding purposes. Anti-avoidance measures in the law may allow local authorities to ignore the gift that has been made, and these measures are subject to periodic change.
- If you subsequently needs to move into a home but does not have the resources to pay for the care yourself because of the gift, the local authority may only pay for the basic level of care, leaving you to rely upon the financial support of others to enable you to move into a home of their choice.
- If you gift the asset to a family member (rather than a trust):
  - the family member may not provide the support expected, resulting in suffering for you - for example, by not topping up care fees, or by moving you prematurely into residential care home in order to occupy or sell the family home.
  - if the family member donee dies or runs into financial difficulties and the donor continues to live in the gifted home, your client may be made homeless.
  - things can become very difficult if the relationship between the you and the family member breaks down, since parties can and often do fall into dispute and even become quite hostile to one another.
  - the family member may later put pressure on you to liquidate the gifted assets.
  - if you transfer your home, you may be deprived of opportunities to adapt to changing circumstances - for example by downsizing, or releasing equity to pay for adaptations or care at home, so you may be left with no option but to move into a care home.
  - The person to whom the assets have been gifted may lose their entitlement to benefits and/or services based on personal means testing.
- If the arrangement is challenged, there could be additional legal fees.
- You will lose your entitlement to Principle Private Residence Relief under Capital Gains Tax legislation, which may result in Capital Gains Tax being paid at the time the property is sold if it has increased in value
- If you gift your property, but retain some benefit in it i.e. continue to live their, the value of the property will still be taken into account as part of your estate when you pass away for inheritance tax purposes

It is important that you take specialist and professional advice if you are thinking about giving your property away. Call Malcolm C Foy & Co today on 01302 340005 or 01709 836866