

Care provision in the UK is changing, and assets are now more likely to be used as payment. However there are ways to secure your home against care fees.

Most couples own their homes jointly.



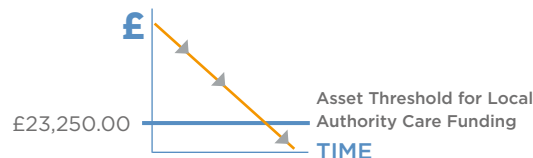
After the first death the survivor owns the whole property.



This is known as a joint tenancy. Most couples also leave all their assets to the survivor in their Will (if they make a Will). If the survivor then needs care in a residential or nursing home, the assets potentially are put at risk as the home may have to be sold to pay for such care.



For most families their home is the largest single asset and they do not want to lose it to pay for care fees. Local Authorities will only help towards the cost of care when your assets fall to below £23,250.00, currently.



So how can you plan to avoid this situation?

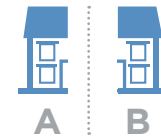
Generally there are two options open to you:

- a) Look at your Will; and
- b) Consider what to do with your savings.

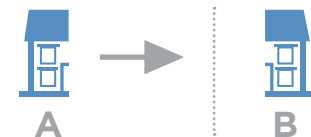
The Wills route

A and B are married. If A gives all of their assets to B, and B then needs care, the house is at risk. To avoid this A and B must alter how they own their property to enable their respective shares to pass under their Wills and not by survivorship.

To do this they must sever the joint tenancy – we can advise you on how to do this.



They should then alter their Wills so that the half that belongs to the first to die is left in trust to the survivor for life.



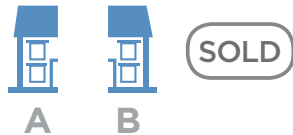
If A dies first – A's half is held in trust for B, who has the right to live in the whole property both in respect of their own half and the other half that is now held under the Trust.

Securing your home against care fees: planning for care

Wills, Trusts and Probate

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B can still sell the house and roll over the proceeds of A's half into a replacement property with the Trustees' consent.



If a surplus arises on sale in respect of A's share then it is invested to give an income to B. The capital will not belong to B.

If B later needs care then, whilst B's half of the property can be taken into account towards the fees, only B's interest in A's trust can be assessed as well (the interest is the right to the income).



In reality, if Social Services or the Local Authority want B to sell the house they would not be able to as there is not much of a market for half a house!



Local Authorities do have power to charge B's half (like a mortgage) but they cannot charge more than B's interest. The question then arises - if the value of B's share is worth nil, how much can they secure by this charge?

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Does this route work?

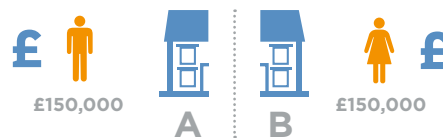
It can do, but if both A and B require care at the same time, their Wills do not then come into effect and the whole property would be at risk because the Local Authority may decide to refuse to fund care unless the house is sold.

The savings route

Can we do better than this and secure the other half of the house? Yes, if there are some savings. Given that the house is usually the biggest single asset, and the idea of a Local Authority having a charge over half the house is unattractive, consideration to securing the other half should be given.

Suppose we have a married couple who own a house worth £300,000 jointly; individual savings of £100,000 each and joint savings of another £100,000.

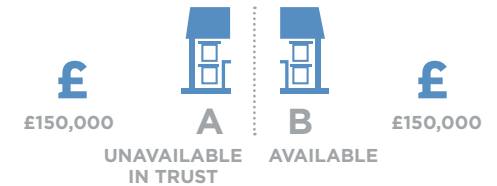
They have both made Wills following advice and have split the cash between them and half the house is held in Trust on the first death. On the second death the estate passes down to their children. Inheritance Tax is not an issue as their estates are below the current combined threshold of £650,000.



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Step 1

A dies and his half of the house goes into Trust for B for life.



Step 2

The Trust has A's half share of the house, and A's £150,000 savings but the Trustees need to invest the money. They offer to buy B's half of the house at the market price. So B receives £150,000 from the trust and B's ability to remain in the house is protected by B's rights under the Trust.



Step 3

B now has £300,000 cash to spend or invest, and the whole property is safely within the Trust. No gift has been made by B.



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Securing your home against care fees: planning for care

With appropriate investment advice, B can invest the money in such a way so as to minimise the risk of the funds being taken towards care. Stamp Duty Land Tax would be payable on the purchase by the Trustees as the share being bought is above the current threshold. However on these figures this represents less than a 2 week stay in the average nursing home!

The gift route

Is it easier to give A's half to the children on first death?

Whilst this might appear to be a simpler outcome, B is at the mercy of the children (or stepchildren). So if a child:

- Dies;
- Divorces;
- Is made bankrupt; or after
- Falls out with you!

Then the property could be sold without B's consent and against B's wishes. There could also be a tax problem with this.

Please note that there are also other issues to consider regarding eligibility for public funding as it is possible that any such lifetime (as described above) gift might be set aside at a later date. Such a gift can never be guaranteed to be effective.

Call our Wills, Trusts and Probate Team on **01733 882800** or email info@hcsolicitors.co.uk to find out how we can help.

This leaflet has been prepared as a guide only and it is important that you obtain professional legal advice on your specific requirements. We believe the information in this leaflet is correct at the time of publication.

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We hope that the information contained in this brochure gives you a useful summary of why you should make a Will. Please contact a member of the Wills, Trusts and Probate team on 01733 882800 or visit our website for more detailed information at www.hcsolicitors.co.uk.

Hunt & Coombs solicitors

PETERBOROUGH 01733 882800

35 Thorpe Road, Peterborough PE3 6AG

HUNTINGDON 01480 411224

68a High Street, Huntingdon PE29 3DN

OUNDLE 01832 273506

4 New Street, Oundle PE8 4ED

ST NEOTS 01480 702207

12 Eaton Court Road,
Colmworth Business Park,
St Neots PE19 8ER

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