

CAMERON JONES HUSSELL & HOWE LTD

SOLICITORS

TRANSFERRING YOUR HOUSE BY DEED OF GIFT/ FAMILY TRUST



INTRODUCTION

Cameron Jones Hussell & howe Ltd are a local Firm providing a comprehensive range of legal services to the general public. We aim to provide an effective and efficient service in a friendly and approachable manner, and to combine modern ideas and technology with the traditional values of a family practice.

This leaflet explains how we deal with transfers by way of Gift.

DEED OF GIFT

These notes assume that you wish to transfer a dwelling house by way of gift which you intend to continue to occupy following the transfer. It also assumes that the dwelling house is free of mortgage or other encumbrance that would prevent you from making such a gift. Usually, although not always, the Donees will be close family members.

There are a number of reasons why you might choose to transfer your property to, say, your children. It may be that you wish to ensure that your children become the owners of the property after your days, or that you wish to defeat a possible claim that might arise after your death. You may simply want to transfer the responsibility associated with owning the property to other family members. Giving away the house that you live in however does involve some risks and you should take into account the following:-

- If the person or persons to whom you give the property dies, becomes bankrupt or gets into financial difficulties, or divorces, then this could have serious consequences. If, for example, the Donee is declared bankrupt then his or her share of the property would pass to the Trustee in Bankruptcy who might seek to sell the same. For these reasons we recommend transferring the property into a Family Trust (as to which see below).
- As the property will no longer be in your name(s), you may lose benefits such as help with Council Tax. You would also lose the right to some grants that might be available for the property.

- Gifts of properties in which you continue to live are not effective for Inheritance Tax avoidance purposes.
- You could become liable for something known as Pre Owned Asset Tax. This will not apply however unless your estate is over the tax threshold. This is something we will discuss with you more fully when we meet to advise you.
- If somebody else owns the property then even if they are close relatives, they could possibly put you under pressure to agree to sell the property or to move elsewhere.
- Transfers of property and trusts cannot easily be changed once they have been completed. In this respect, they are unlike a Will which you can change whenever you wish. You should therefore be quite clear about your wish to transfer the property as we may be unable to reverse the transaction if you later change your mind.
- If you should go into care after having given away your property, and you seek help with funding from the Local Authority, it may be that the gift of the house will be brought back into account. This is because you cannot deliberately remove assets from your estate if your primary intention is to obtain benefits that you would not otherwise be entitled to. Again this is something that we will discuss with you during the course of our instructions.

THE FAMILY TRUST

We would usually recommend transferring the property into a Family Trust rather than giving it to the Beneficiaries as an outright gift. This will involve the appointment of two Trustees who will take a transfer of the property into their names, but who will then declare that they hold it upon trust. This means that if anything happens affecting the Trustees personally, the Trust itself will not be affected. We prepare a Declaration of Trust by which the Trustees will agree to hold the property upon the terms agreed. These would normally be to provide for you (or the survivor of you if more than one) to have the exclusive use and occupation of the property for the rest of your days or for as long as you remain capable of independent living; after your days or if the property becomes vacant the Trustees can then sell it and the monies can be paid to the persons named

in the Trust as the Beneficiaries – who may well be the same persons as the Trustees.

In addition the Trust Document will provide that no one else will be allowed to live at the property without your consent and that you have the right to move to a smaller property or more convenient property if you so wish. The new property purchased would simply replace the existing property in the Trust.

The Trust Document would also provide that you continue to pay the outgoings on the property, maintain the insurance and keep the property in reasonable repair. It would also provide that any temporary absence from the property would not be treated as a ceasing to reside.

Although the property is not transferred by way of outright gift, it will no longer be registered in your name(s).

All of these matters will be more fully explained during the course of our meetings together.

CONDUCT OF THE MATTER

The Solicitor having the overall responsibility for the conduct of this matter on your behalf will be named in the accompanying Client Care letter. He or she will be assisted by dedicated members of our support team and again they will be identified in the accompanying letter. Please note that the Solicitor responsible will not transfer the file to another Solicitor or Fee Earner without your prior approval.

Please help us to help you by responding promptly to any letters that we send to you and by making appointments when requested to do so. Please try to avoid calling at the office without an appointment, as it may not always be possible to see you in those circumstances. In the unlikely event that you telephone the office and are unable to speak to one of our team, please ensure that our Receptionist has clear instructions as to whether you will phone again or wish to be called back. Please leave your name, phone number and any details of when you will be unavailable.

You are also welcome to contact the person in charge of your matter or his or her assistants at any time for information. You may contact us by telephone, email, fax or letter.

COSTS

Usually, our costs will have been agreed with you at the outset. Please see our introductory letter for further details. Costs will become due and payable once the documentation has been signed. Should the matter not proceed to completion for any reason we reserve the right to charge you a fair proportion of the fee based upon the actual amount of work carried out.

Our bill may include disbursements. These are payments that we have to make on your behalf. They will be fully listed in the quotation that we have given you. If any exceptional disbursements become necessary we will of course advise you.

If you do have any concerns about the costs you may have a right to object to the bill by applying to the court for an assessment of the bill under Part III of the Solicitors Act 1974. Details available upon request.

IDENTIFICATION

It is our standard practice these days to request all clients to provide satisfactory evidence of identity. We enclose herewith a list of the items which are acceptable for establishing this. Please would you be good enough to call at the Office at an early stage bringing with you suitable identification for photocopying. Occasionally, we may be asked by third parties to produce evidence of your I.D. and we will assume unless you advise us to the contrary that you have no objection to us passing on details of your I.D. in such cases.

CONFIDENTIALITY

We will not discuss your business or disclose the contents of your file to any third party without your written consent except that:-

- Unless you instruct us otherwise, your file may be used for auditing or monitoring purposes and

- We are legally obliged under the Proceeds of Crime Act 2002 and other similar legislation to report any knowledge or suspicion of money laundering to the Serious Organised Crime Agency.

COMPLAINTS

We do of course very much hope that you will not have cause to complain about the services which you receive from us. If you do however have any concerns about the way in which your matter is being handled, the costs presented to you or about our services generally, we should be grateful if you would please in the first instance contact the Fee Earner having the overall conduct of this matter in order to discuss your complaint. Should we be unable to resolve any complaint raised by you by this method, then we will ask you to put the complaint in writing to our Complaints Manager, John Hussell. He will then deal with the complaint from that point, providing you with full details of our complaints procedures. If your complaint is regarding a matter that he has conduct of, then Mrs Sally Kingsbury will deal with the complaint.

If you are still not satisfied you can contact the Legal Ombudsman (www.legalombudsman.org.uk). Tel: 0300 555 0333. Or you can email them at enquiries@legalombudsman.org.uk. Any complaint to Legal Ombudsman must usually be made within six months of receiving a final written response from us. The Legal Ombudsman may not consider a complaint about the bill if a client has applied to the court for assessment of the bill.

CONCLUSION

We hope that the above notes and observations are helpful to you and will assist you in understanding how this matter is being dealt with. Please retain it for reference and if you have any comments or observations about our services then please do not hesitate to let us know.

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*This leaflet is intended as a guide for clients of Cameron Jones
Hussell & Howe Ltd. It is not intended to be a detailed statement of
the law nor does it obviate the need to take appropriate legal advice.*