REST HOME SUBSIDIES

As the sands of time start to run out many of us turn our minds to preserving our assets for the next generation and often beyond them. The earlier we commence the estate planning process the better. Succession plans are based on the law at the time they are made and it is always difficult to foresee what rules will be introduced by the various governments in future years.

As old age creeps up on us, some will require medical care which will necessitate moving into a rest home or hospital. Until a few years ago, anybody needing care of that kind had to use up nearly all of their assets before they would be eligible for a rest home subsidy.

Some years ago the government of the day raised the amount of assets an applicant could keep and still qualify for a subsidy. That threshold was to increase by $10,000.00 per annum, but a subsequent government altered the increase to reflect the rate of inflation for the previous year.

From 1 July 2013 a single applicant or an applicant with a partner who is also in care must have combined assets valued at $215,132.00 or less to qualify for the subsidy. If an applicant has a partner who is not in care they can choose either a threshold of $117,811 (house and car are exempt) or $215,132 (house and car not exempt). As might be expected assets include cash investments, life insurances, loans, vehicles, investments properties and home and car (sometimes). An Applicant and spouse / partner may also have up to $10,000.00 each in a pre-paid funeral arrangement but it must be in a recognised funeral plan.

With the increase in the value of homes the threshold is now quite low and the question which arises is how to put a plan in place which will protect the assets for the family.

Many people over the years sold their homes to a Family Trust and made annual gifts of $27,000.00 each until the debt to them was either totally or partially forgiven. Prior to the sale many created life-time leases giving themselves the right to remain in the home for the future.

WINZ policies have changed over the past few years and are likely to continue to change. For some time now WINZ has regarded the lifetime lease as an asset of any applicant for a rest home subsidy and with some homes it can be a quite valuable asset. So for those who still have such a lifetime lease, the surrender of that lifetime lease is now recommended in order to help protect that "asset" as well.

WINZ also now makes a very thorough search of an applicant's means before granting a subsidy and is looking very carefully to see whether an applicant has deprived herself / himself of assets to fall within the threshold for a subsidy. A policy which WINZ adopted some years back was that if a Trust's only asset was the family home they did not look too hard at the history of the Trust but if an applicant had transferred a lot of assets to a Trust they had a closer look at the applicant's activities especially if income producing assets were transferred to the Trust such as a rental property, shares which produced dividends, etc.

Recently the Social Security Appeal Authority upheld a WINZ decision on the deprivation aspect of an applicant who, with her husband, had set up a Trust, transferred assets to the Trust and then wrote off $27,000.00 each annually until the debt was fully paid off. The Social Security Appeal Authority's decision was that the applicant and her husband had deliberately deprived themselves of assets by gifting $54,000.00 in total annually. Of greater concern is that the Authority has held that even though the husband did not require care or seek a subsidy, his annual gifting was also included in the amount WINZ assessed the applicant had gifted. This decision was upheld by the High Court and it has now been appealed to the Court of Appeal. Until the Court of Appeal decision is known there is some uncertainty about how much should be forgiven each year by way of a gifting programme. With the recent abolition of gift duty, some very substantial gifts have been made, at times in excess of a million dollars.

While every care must be taken when undertaking an estate planning exercise, it is difficult to tell what the future may hold insofar as changes to government policy go. Crystal ball gazing is not desirable when it comes it estate planning whereas being able to plan with certainty is highly desirable.

It used to be that nothing was more certain than death and taxes. We now seem to be advancing steadily towards a third certainty – being asset and income tested on our after tax savings. It seems like a punishment for being frugal for all those years.

It is not unreasonable for people to try to protect such savings for the benefit of future generations in the hope that they may lighten the future financial burden for their family and to help provide them with opportunities that were merely dreams 65 or so years ago.

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