

Giftng a Property: What You Need to Know

We are often approached by clients looking to gift their home or other property to children, relatives or unrelated persons. Such transfers are not without pitfalls.

This article examines the various implications of gifting a property whether in whole or part.

Consider this scenario:

- Mr S, aged 65, would like to gift his buy-to-let property to his niece Miss T, who is a single mother of 35. Mr S wants to know what the implications are for them both if he gifts the property to his niece.
- Mr S bought the property in 2012 for £144,000 and his niece Miss T has been living in the property since then with her 12 year old son.
- Mr S now believes that the property is now worth £180,000 and wishes to sell it to his niece for £90,000, effectively gifting 50% of the house to her. Mr S is financially well provided for.
- His niece will need to raise a mortgage to buy the house and she is looking to borrow the maximum sum she can.
- Mr S is a higher rate tax payer and Miss T is a lower rate tax payer.
- Mr S has come in to ask how best to go about transferring the property. He wants to know how best he can go about the transaction and also whether his niece can raise a mortgage or not.

In essence, Mr S and Miss T need to consider the following:

Capital Gains Tax

When selling property, buy-to-let property owners usually pay Capital Gains Tax (CGT) on any profits made on the property. CGT is payable on the taxable gain at 18% for basic rate tax or 28% for higher rate tax payers.

CGT will be payable by Mr S based upon the gain which he would have made if he had sold the property at the full market value of £180,000. However, Mr S can use his annual tax exemption of £12,000 to reduce the taxable gain. He could further reduce the taxable gain if he can prove that he has paid out to improve the property during the time he has owned it.

Stamp Duty Land Tax

Stamp Duty Land Tax (SDLT) is payable if you buy a property or land over a certain price in England and Northern Ireland.

SDLT will be payable by Miss T on the purchase price rather than the property's true value. The threshold for Stamp Duty is £125,000 and since Miss T will be gifted the £90,000 and is only paying £90,000, no duty is payable.

Inheritance Tax (IHT)

IHT is a tax on the estate of a person who has died.

For Inheritance Tax purposes, Mr S will be classified as having made a gift of £90,000 and this will be treated as a potentially exempt transfer.

IHT Impact

The nil rate band is the threshold under which an estate has no Inheritance Tax to pay.

If Mr S dies within 7 years of making the gift, his nil rate band allowance (£325,000) will be reduced, thus reducing the tax free element of the estate and increasing the amount of IHT payable.

However, if Mr S survives until he reaches 72, then the gift would have no IHT impact. **It may be worth considering insuring Mr S's life for 7 years with a policy that would cover any potential liability on his estate.**

Miss T's Mortgage

In relation to Miss T's mortgage, usually the maximum mortgage available, (the loan to value (LTV)) is based on the lower of the purchase price or the mortgage valuation.

If however a property is sold by a family member at below market value, there are lenders who would base the LTV on the property value and lend up to 100% of the purchase price subject to Miss T being able to meet affordability and other criteria.

It is important to realise that in this potential transaction, each party must have separate legal representation. It is not possible in a case of this nature for one firm of solicitors to act on behalf of both parties. This even applies to cases where family members are involved.

If the donor lives in the property

You should note that if you gift a property you are currently living in, you will no longer be the legal owner and have no legal right to live in the property. You should consider what would happen should you fall out with the beneficiary.

There may also be issues if you need to go into residential care. The Local Authority can ignore that the asset was gifted in the assessment of your assets and ultimately the fees you will pay for the care home will be higher.

It is imperative that you seek legal advice before going ahead with any gift of property.

If you are considering a gift of property, please speak to one of Butcher & Barlow's specialist succession planning solicitors for advice upon the implications.

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