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for older people, their families and carers

factsheet

Counsel and Care factsheet: 9

Valuing beneficial interest: 'right to buy'

Financial assessment

The decision on whether to include capital from the value of a property in your financial assessment for care home fees and how much to include, will be made at the time of the **financial assessment** carried out by the local council Social Services in accordance with the **Charging for Residential Accommodation Guide (CRAG** – available at www.dh.gov.uk). (Please see **guides 16: Care Home Fees: paying them in England, 52 (Scotland) or 72 (Wales)** for more information. This can also be a retrospective decision if the council finds out at a later date that, for example,



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an older person had a property but transferred it to someone else before moving to a care home.

Legal and beneficial ownership

A **legal** owner is the person whose name is on the title deeds.

They may or may not be entitled to benefit from the sale of the property. A **beneficial** owner is a person who is entitled to benefit from the sale of the property whether or not their name is on the title deeds.

What is a beneficial interest?

Beneficial interest is a value that you or any other person is entitled to receive from a sale of a property. If someone can provide evidence that they contributed to the value of the property (paid the mortgage, contributed to the purchase price, paid for repairs/alterations and so on) they may be viewed as beneficial owners.

Valuing the older person's beneficial interest in a 'right to buy' property

Kelly v LB of Hammersmith is one of the legal cases that established the council's right to take the discount received by an older person when buying a former council property into consideration as the amount of beneficial interest they have. So, if under the 'right to buy' scheme, your son paid 30% of the purchase price on a property where you had a 70% discount under 'right to buy', you would have a 70% beneficial interest in the property and your son would have a 30% beneficial interest.

The first step you may want to consider if you need to value beneficial interest is to contact the **Royal Institute of Chartered Surveyors** (RICS) on **0870 333 1600**. The website address is www.rics.org.uk. You may want to request that a surveyor who understands the concept of beneficial interest values the property **and your beneficial interest** in the property. This would give you a starting value for your share in the property. For example and for ease of calculations, if the value of the property was £100,000 and you had a 70% beneficial interest, then the value of your share would be £70,000. This is a starting figure because this value of £70,000 is not necessarily the figure that should be included by Social Services in the financial assessment. This is described below:

Beneficial interest/ownership and treatment of property in CRAG

In section 7 'treatment of property' of **CRAG**, which is used by councils to determine financial contributions, it sets out the treatment of beneficial ownership and beneficial interest in financial assessments. If the council assesses you as a beneficial owner of the property, you are entitled to benefit from the future sale of the property. The amount of beneficial interest in the above example would be a 70-30 split between you and another person. However, **it is not the actual financial value of your 70% share that should be taken into account in a financial assessment.** As stated in CRAG, the value of the 70% **interest** is governed by two things:

- firstly, the amount that a **fellow beneficial owner** is able to pay for your share, or

- there being a **market and a willing buyer** for that 70% interest in the property.

The value of your interest for financial assessment purposes will then be what the willing buyer or fellow beneficial owner is willing or able to pay.

As CRAG states, this could mean that even if the value of that share of the property is £70,000, if the property as a whole had been sold, **the value of the share may be only, for example, £20,000 – the value that a willing buyer or fellow beneficial owner will/can pay for that share.** It is your **interest** that has to be valued, not the property value itself.

Financial and legal advice

As we are not legal or financial advisors and the information set out above is the result of research from the relevant policy guidance, you may want to seek more expert and in-depth legal and/or financial advice. The **Financial Services Authority (FSA)** can be contacted on **0845 606 1234** or through their website: www.fsa.gov.uk. They may be able to direct you to a financial adviser. You may also want to talk to the **Community Legal Services (CLS)** on **0845 345 4 345** and ask them to direct you to a solicitor who specialises in community care and paying for care. The **Royal Institute of Chartered Surveyors** can be contacted as above.

Further information

Counsel and Care is a national charity; however the creation of the Scottish Parliament, and the Welsh and Northern Ireland

Assemblies means there are differences in the ways each region cares for and supports older people. The information in this factsheet applies essentially to England although there may be similarities with Scotland, Wales and Northern Ireland.

If you need further information or advice about legal and beneficial interest, financial assessments or deprivation of capital please see the other factsheets in this series or our guides at www.counselandcare.org.uk. All our factsheets and guides can also be ordered by telephoning our guide order line on **0207 241 8522**.

Alternatively, if you have a query relating to the valuation of property (including 'right to buy') for financial assessments, you may want to contact our advice line on **0845 300 7585** or send your enquiry by email to advice@counselandcare.org.uk.

Counsel and Care is the national charity working with older people, their families and carers to get the best care and support. If you have found our service helpful, please consider making a donation or leaving a legacy in your Will. You can arrange either by telephoning 020 7241 8555 or using the secure service on our website www.counselandcare.org.uk.

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