

Disability Law Service

Offering free, confidential legal advice and
representation for disabled people

Charges for Residential Accommodation

Charges for Residential Accommodation

Introduction

Charging for residential care is compulsory under Section 22 National Assistance Act 1948. Charges apply to any accommodation provided for more than eight weeks, and the amount charged must be the 'standard rate,' which will be the full cost to the Local Authority of providing the care.

Financial Assessments

Your local authority has to assess you to see if you are financially able to pay for your accommodation. If, having carried out an assessment, the authority is satisfied that you are not able to pay the standard rate the authority must decide what you should contribute to the cost of your accommodation, based on the assessment. The **Charging For Residential Accommodation Guide** or '**CRAG**' (you can get a copy of this on the Department of Health's website at: www.doh.gov.uk) says that authorities have to make sure that they explain clearly (usually in writing) how they worked out what you must contribute to the cost of your accommodation and why this figure may change.

Savings

Currently, the law says that if you have savings or investments of £23,000 or more, you must pay the full cost of your residential accommodation. If you have savings and investments below this amount, but of at least £14,000,

what you will have to pay will depend on how much you have in savings and investments.

If you are married or have a civil partner, this limit applies only to your savings and investments, or your share of your joint savings and investments. If you have savings and investments of less than £14,000, you will not have to pay anything towards the cost of your accommodation. If you have less than £23,000 of savings and investments, but more than £14,000, the amount you will have to pay towards your accommodation will be £1 for every £250 you have over £14,000 and class this as your weekly income.

Income

Assessing your income is complicated. Guidance says that couples must be assessed individually and their income will be split equally. However, authorities are able to ask a person's husband, wife or civil partner to make payments towards the cost of their partner's care under the Government's 'liable relatives rule'. In general, only one person's income is taken into account. Authorities must allow you to have a weekly personal expenses allowance of at least £21.90, and not take this into account when they assess your income. In some circumstances (for example, if you are younger and more independent), authorities can vary the amount of personal expenses allowance you may have before they take it into account.

Property

For most people the single largest asset they have will be their home. There are certain circumstances where authorities must not take its value into account and some circumstances where they must take its full value into account. Your local authority should not take account of the value of your home if you are:

1. Only going to be staying in a residential care or nursing home temporarily (for up to 52 weeks); **and**
2. Going to return to your home; **or**
3. Taking reasonable steps to sell your home so that you can move into another, more suitable home. Your local authority must not take account of the value of your home for your first 12 weeks in permanent residential care, to allow you enough time to consider how you are going to pay for your accommodation. If you no longer live in your home, your local authority should not take account of its value if there is someone living in your home who is your;
4. Partner or former partner (except when you are divorced or your relationship has broken down) is still living in your home;
5. Former partner (you are divorced or estranged from) and they are looking after a dependant child or relative (as defined in CRAG) who is:
 - 60 or over;
 - Under 16 you have a responsibility to look after them; or
 - Incapacitated (not able to look after themselves)
6. However, your local authority will take account of the value of your home if that person moves out.
7. Your local authority may not take account of the value of your home if someone else lives there who is not in one of the categories above. It may be reasonable, for example, if the person living there has given up their own home to care for you, or if they are elderly and gave up their home to live with you.

Jointly owned property

If you own your home with another person and would be able to sell your home to the other joint owner, your local authority will assess the value of your share of the home as what the willing buyer would pay. This is shown in the example shown on the next page:

Example

You own your home jointly with two of your relatives. You have paid your mortgage in full and it is valued at £90,000. You have been admitted to a residential home. If your home was sold, your share would be worth £30,000. However, one of your relatives offers to buy your share for £15,000. Your local authority would assess your share of the home as being £15,000, as this is the amount you could get from a willing buyer. In this case, your local authority would actually assess the value of your share as being £13,500 (after taking off 10 per cent to cover the cost of transferring the deeds).

If you have no interest in the value of your home then you cannot be treated as owning a share in it. It can be dangerous to transfer your share of your home to other people for less than the market value. By law, a local authority can assume that you sold your share of your home for less than it is worth to avoid having to pay more towards the cost of your residential accommodation. If you transfer your share of your home to someone else three months before you move into residential accommodation and receive no payment, your Local Authority may find this suspicious, and they may say that you are 'depriving yourself of your assets' in order to avoid paying a charge.

If you transfer your home in this way two years before you move into residential accommodation, your local authority may not think this is suspicious. However, if you transferred your share of your home this way to avoid charges sometime in the future, your local authority may still treat you as owning your share of your home.

If your Local Authority still considers you own your share of your home, it will charge you for your residential accommodation in line with how it has assessed you financially. If you do not pay these charges, your local authority

may take action against you to force you to pay. In this situation, you will have various options. If you transferred your home to someone else within six months of moving into residential accommodation, the person you transferred it to will be responsible for that share of your home and your local authority could sue them. But, your Local Authority would have to prove that you transferred your share of your home (for less than its full value), knowing that you would be able to avoid paying for your residential accommodation.

If the transfer took place more than six months before you moved into residential accommodation, your local authority may apply to the court to make you bankrupt. The **Insolvency Act 1986** gives the court the power, in certain situations, to force you to become responsible for your share of your home again. It is impossible to know whether your local authority will want proof as to why you transferred your share of your home to someone else without accepting any or full payment for its value.

If you require further advice on any of the issues covered in this factsheet, or on any other community care matters generally, please contact the DLS on: 0207 791 9800.

This factsheet was prepared with the assistance of the MS Society.

July 2009

Legal Disclaimer

Although great care has been taken in the compilation and preparation of this work to ensure accuracy, DLS cannot accept responsibility for any errors or omissions. All information provided is for education / informative purposes and is not a substitute for professional advice. Any organisations, telephone numbers and links to external web-sites have been carefully selected but are provided without any endorsement of the content of those sites.

For further advice on these matters please contact:

Disability Law Service

Telephone: **020 7791 9800**

Minicom: **020 7791 9801**

Fax: **020 7791 9802**

Email: **advice@dls.org.uk**

Website: **www.dls.org.uk**

Or write to us at: 39 – 45 Cavell Street, London E1 2BP

Community
Legal Service



advice^{UK}
MEMBER



Registered Charity Number 280805, Company Registration Number 1408520