



Deathbed gifts: what you need to know

You have probably seen this scene in a film: someone who knows they are dying presses a treasured possession into a loved one's hands - a watch, a ring, a set of car keys - and says, "I want you to have this." What you may not realise is that this moment has a name in law: *donatio mortis causa*, or a deathbed gift.

A deathbed gift sits in an unusual space between making a valid Will and giving something away during your lifetime. Unlike a standard gift, it only becomes final when the giver dies. Unlike a bequest in a Will, it does not require the same formalities. This flexibility can make deathbed gifts appealing - but it also makes them legally precarious.

In practice, deathbed gifts trip people up far more often than they expect. The law sets out clear rules that must be followed, and families often end up arguing over whether a gift was truly intended. Whether you are planning ahead, have received such a gift, or are advising someone who has, understanding what the dying person really meant is important. This article explains how *donatio mortis causa* and deathbed gifts work, what can go wrong, and what you need to know if you are ever involved in one.

Why does the law care?

Wills come with built-in safeguards. They need to be signed, witnessed, and written down. A deathbed gift skips all of that, so the courts are naturally suspicious. The worry is obvious: when someone is seriously ill, they may be confused, under pressure, or simply misunderstood. The law therefore insists on clear proof that the gift was genuinely meant and properly carried out.

The three things that must be present

For a deathbed gift to hold up, three requirements have to be met. Miss any one of them and the gift fails.

The person must believe death is close, and for a specific reason. A general sense that life is short does not count. The person must be facing a real, identified threat; a terminal diagnosis, an upcoming operation they may not survive, or a rapidly worsening condition.

Think of it this way: your elderly grandmother saying "I won't be around forever" over a cup of tea is not contemplation of death in the legal sense. Your grandmother saying "the doctors have told me I have days left" while handing you her engagement ring; that is.

The gift must be conditional on dying. The whole point is that the gift only kicks in if the person actually dies. If they pull through, the gift falls away automatically and the item goes back to them. They can also simply change their mind at any point before death.

There must be a real handover of control. This is where most deathbed gifts come unstuck. It is not enough to say “that painting is yours now.” The person must actually hand something over; the item itself, or the practical means of getting at it.

For a car, that would mean handing over the keys and the V5C registration document. For shares, it would mean handing over the share certificates. For a savings account, it might mean handing over the passbook, though modern banking has made this far trickier than it used to be. A promise, a text message, or a note stuck to the fridge will not be enough on its own.

What can actually be given this way?

Some things lend themselves to deathbed gifts better than others.

Jewellery, watches, art, and other physical objects work well, because you can literally place them in someone’s hands. Cash can work too, though transferring control of a bank account is not as straightforward as it sounds; banks have their own processes and are not always cooperative at short notice.

Property, houses, flats, land, is the big problem area. English law requires land transfers to go through formal channels: deeds, Land Registry registration, the lot. Trying to give someone your house from a hospital bed by handing them a set of house keys is almost certainly going to fail. The courts have occasionally bent the rules on this, but it remains deeply uncertain territory.

Some examples

Example 1 - the classic car. Margaret is in hospital with terminal cancer. She calls her niece, Sophie, to her bedside and says, “I’m not going to get through this. I want you to have my MG. Here are the keys and the logbook.” She hands them over. Margaret dies a week later. This has a decent chance of being upheld: Margaret knew she was dying from a specific illness, she made the gift conditional on her death, and she handed over the means of control.

Example 2 - the failed house gift. David is gravely ill and writes a note saying, “My house goes to my brother James if I die soon.” He does not hand over the title deeds or do anything at the Land Registry. David dies. This gift will almost certainly fail. A note without any real transfer of control, particularly for registered land, does not satisfy the legal test. The house stays in David’s estate and passes under his will or the intestacy rules.

Example 3 — the bank transfer done properly. Patricia is terminally ill but still has her wits about her. She contacts her bank and formally transfers £30,000 into her grandson’s account before she dies. Strictly speaking, this is not a deathbed gift at all; it is a lifetime gift, completed during her life. It is far more robust and much harder to challenge.

Example 4 — the vague words. Frank, seriously unwell, tells his daughter, “You can have my things when I’m gone.” He does not say which things. He does not hand anything over. This is going to fail. “My things” is too vague, there is no identified asset, and there is no delivery of control.

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What happens when it goes wrong?

If the gift is not valid, the asset drops back into the deceased's estate and gets dealt with under their will, or, if there is no will, under the intestacy rules. That might mean the item ends up going to someone the deceased never intended.

Disputes are common, and they tend to be bitter. Family members may remember conversations differently. Someone might claim the dying person was confused or was being pressured by whoever ended up with the gift. Proving what was said and done at someone's bedside, often with no independent witness, is inherently difficult.

On the tax front, do not assume there is any advantage. In England and Wales, a deathbed gift may still be caught by inheritance tax, and executors may need to account for it when administering the estate. The position varies depending on the circumstances and timing.

Common questions

Can the person take a deathbed gift back?

Yes. If they recover, the gift is automatically cancelled. They can also revoke it at any time before death simply by saying so.

Do I need a witness to a deathbed gift? There is no strict legal requirement for one, but having a neutral witness, someone who is not going to benefit from the gift, can make an enormous practical difference. A short-written note signed by the person giving the gift, or even a video recording, can also help if the gift is later challenged.

What if there is a Will that says something different? If the deathbed gift is valid, it takes effect outside the will. The relevant asset is treated as having already left the estate. If the gift is not valid, the Will (or intestacy) applies as normal.

The key take away a valid Will is always better than a deathbed gift. A deathbed gift is a last resort; a narrow exception that the law tolerates because sometimes people simply run out of time. But it is fragile, uncertain, and easy to get wrong. If there is any possibility of making or updating a will, even a very short one, that is always the better path. A valid will signed and witnessed in the proper way removes doubt, reduces the scope for family disputes, and makes life far easier for those left behind.

Contact us

To find out more about our Wills, Tax, Trusts & Probate team and how we can help you, please get in touch.

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