

General advice to Lola

- Do nothing before you get independent legal advice.
- Check with Centrelink about your pension rights.
- If you wish to go ahead, get formal agreements in writing.
- If troubles occur get legal advice as soon as possible.

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Contact OWN NSW:
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Agencies and others Lola could contact for help and advice:

- 1 The Older Persons' Legal Service (A service of The Aged-care Rights Service). Tel: (02) 9281 3600 or 1800 424 079 (toll-free)
- 1 Financial Information Service (FIS). Tel: 132 300
- 1 LawAccess NSW
Tel: 1300 888 529. TTY: 1300 889 529
- 1 Legal Information Access Centre (LIAC) (02) 9273 1558 or liac@sl.nsw.gov.au
Tel: 1300 888 529. TTY: 1300 889 529
- 1 Welfare Rights Centre -
Tel: (02) 9211 5300
or 1800 226 028 (Toll free)
- 1 Her solicitor. If Lola does not have a solicitor, she could contact the Law Society of NSW Solicitor Referral Service on (02) 9926 0300 for a list of solicitors in her area who deal with elder law matters.

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A Room of One's Own

Legal and financial issues for older women considering 'Granny Flats'



Lola is finding it hard to manage her old two-storey home, but she is unsure what she should do...

Lola has a two-storey house. She does all her own housework and shopping and manages this well using the local community bus service. However, she finds it a struggle to keep up the maintenance on the property and the ever-increasing council rates, with the old age pension being her only source of income.

Last summer Lola sprained her ankle and had to spend six weeks living in the lounge room and showering in her laundry because she couldn't climb the stairs. Her friend Joan had to move to a retirement village after she broke her hip, and now they hardly see each other. Lola knows she will also have to plan her move soon, but she'd like to consider her options. Lola likes the area where she is. She knows where all the services are, and she is able to see her other friends.

Property values in the last ten years have soared. Lola's son, Rudi, has suggested she sell up and that she invests her money in his new house, where he and his wife will accommodate Lola in a Granny Flat. He lives two hours away and her other two children are only forty minutes from where she is now, and they visit every second week. She doesn't want to rush this decision, but she feels time is not on her side.

Questions Lola might ask

Q. If I agree to do this, what problems could occur?

A. Entering into a "granny flat" arrangement is a risky business without legal protection.

Problems might arise with this arrangement if your circumstances change. You might meet someone else

with whom you wish to share your life or you may need more care than this arrangement offers. The unfortunate situation might arise where there is a dispute between yourself, Rudi and his wife, or other members of your family.

Q. If I agree to this arrangement, what right do I have over how my money is used?

A. You do have rights to specify how your money is to be used by Rudi. It is highly recommended that you seek independent legal advice regarding drafting a formal agreement specifying your options in order to protect your interests. A formal agreement involving significant money or property is essential, as it can outline your rights in the event any of the following questions should arise:

- Can I have access to the remaining money left from building/furnishing the granny flat?
- What happens to my portion of the contribution to the property if Rudi and his partner separate, and what happens to me?
- Will I get the money I gave Rudi to refurbish his home if I choose to relocate and no longer live with the family?
- Should my name be on the title deed?

Q. Will this granny flat arrangement affect my pension?

A. This granny flat arrangement may affect your pension entitlements.

It is important that you contact Centrelink and also seek independent legal advice regarding the effects of the transaction on your entitlements. Centrelink has special rules regarding granny flat arrangements.

Q. Even though it may offend my son, should we clarify our intentions and expectations regarding this arrangement by having a formal, written agreement drawn up?

A. Yes. It is important to keep in mind that if no formal written agreement is in place, the financial contribution could potentially be regarded as a gift, which could affect and reduce your pension payments or, in certain situations, stop the payment altogether.

Q. Is it possible to draw up documents to cover other non-financial issues, such as care, housework and maintenance?

A. Yes. You can arrange to have a Family Agreement made to clarify each party's understanding of their responsibility which may have formed a large part of the argument used to persuade you of the potential benefits of this arrangement.

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- ① Financial Information Service (FIS). Tel: 132 300
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- ① Her solicitor. If Louise does not have a solicitor, she could contact the Law Society of NSW Solicitor Referral Service on (02) 9926 0300 for a list of solicitors in her area who deal with property and partnership matters.



Love at Last!

Legal and financial considerations for older women negotiating new relationships



Louise never expected to fall in love again at her age. This new romance seems to be heralding some rapid changes . . .

Louise's husband died when she was only 45 and since then she has lived alone, working full time as a shop assistant. All her savings have gone into maintaining her home, which is her only asset, and she is now about to apply for the age pension.

Six months ago she met John at tennis, they started dating, and in no time at all John suggested that they try living together. Although cautious, Louise agreed after she had sought some advice from Centrelink.

A little later John decided to share with Louise his 'innovative business proposal' which involved Louise selling her home to finance the venture. He would, of course, make her a partner so that they could both share in the profits. In John's words it was a "win-win situation".

He suggested they could also rent an apartment - naturally with the lease in Louise's name, to give her "added security."

Questions Louise might ask

Q. If I become a partner in John's scheme, what are some of my legal obligations?

A. There are a number of legal obligations about which you need to be aware before you decide to become John's business partner. You would be unwise to agree to the proposal before consulting a professional about those obligations.

Q. What impact will selling my home and investing in this scheme have on my ability to qualify for the pension?

A. Selling the home and investing in John's business venture may affect your pension entitlements. It is a very good idea to contact Centrelink and also seek independent legal advice regarding the effects of the transaction on your entitlements. Centrelink have special rules regarding investments and profits derived from businesses.

Q. If John and I do move into an apartment together, should we make formal agreements regarding financial responsibilities for rent and household expenses?

A formal agreement involving significant money or property is essential, to outline your rights and responsibilities, especially as John has made a point of indicating that he wants the lease to be in your name. This would mean that liability for any defaults rests on your shoulders, and not on John's.

You also need a written agreement, to determine what responsibilities you each have regarding the financial contributions towards rent,

household bills, financing of holidays, banks accounts and purchasing of property, i.e. furniture or vehicles. Without a written agreement in place signed by both of you, it will be very hard to prove whose responsibility it is regarding financing and ownership, especially if there are any disagreements in the future.

Q. What other factors should I take into consideration?

A. Do not sign anything without getting legal advice first and make sure that your legal adviser explains everything to you before you sign.

Q. How can I let John know that my desire to protect my interests is not a rejection of him?

A. Perhaps you could have a serious talk with John along these lines:

John, you sound very excited about this proposal but it's a big step for me, and I made a promise to myself that when it came to my home I would never risk losing it. So that you can see how serious I am about your proposal, I have made a couple of appointments to see a financial advisor and a lawyer to get legal advice before I make any big changes to my situation.

- **How** do you wish to communicate any changes to your family and friends?

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A list of some of the agencies that Fay could contact for help and advice:

- ① The Older Persons' Legal Service (A service of The Aged-care Rights Service). Tel: (02) 9281 3600 or 1800 424 079 (toll-free)
- ① Lesbian and Gay Legal Advice Service. Wednesday evenings Tel: (02) 9332 1966
- ① Financial Information Service (FIS). Tel: 132 300
- ① LawAccess NSW
Tel: 1300 888 529. TTY: 1300 889 529
- ① Legal Information Access Centre (LIAC) (02) 9273 1558 or
Tel: 1300 888 529. TTY: 1300 889 529
- ① Welfare Rights Centre -
Tel: (02) 9211 5300
or 1800 226 028 (Toll free)
- ① Centrelink Same-Sex Reform Enquiry Line Tel: 136 280
- ① Her solicitor. If Fay does not have a solicitor, she could contact the Law Society of NSW Solicitor Referral Service on (02) 9926 0300 for a list of solicitors in her area who have experience in these matters.

Over the Rainbow

Legal and financial considerations for older lesbians negotiating new relationships



Fay and Judy had been dating for three months and it was magic . . .

Fay's relationship with Judy felt like the most exciting thing that had happened to her in years.

The introduction of the new Same Sex legislation had been the cause of increasing anxiety for them both, with Judy dependent on a Carer's Pension, and Fay self employed as a Naturopath.

Ten years ago, when Judy was 47, she had agreed to take on the role of live-in carer for her friend Clair. Clair suffered from Parkinson's and subsequently dementia, and had reached the point where she needed specialist care. Judy was in the process of organizing all of this when she and Fay first met.

Shortly after Clair had been moved to a care facility, Judy was notified that she would no longer be receiving the Carer's Pension, and that Clair's house was to be sold in order to pay for her medical expenses.

That day Judy, aged 57, was in tears as she told Fay she was now unemployed and would soon be homeless.

Fay knew what Judy was afraid to ask, and it terrified her too...

If Judy moved in, would she have to support her financially?

What would this do to their new relationship? Fay could barely support herself.

Where would Judy go if Fay didn't make the offer?

How would Fay's next move define their future, and how could she now put herself in a situation where she felt free to make a sensible choice?

Questions Fay might need to ask

Q. How can I show support for Judy without making a commitment before seeking professional advice?

A. Perhaps the first thing would be to have a serious talk with Judy along the following lines:

Things have become serious between us very quickly and I'm sure that neither of us wants it to stop, but we are old enough to know that if we want it to develop we need to plan carefully for our future.

I made a promise to myself that when it came to my financial security I would never make a decision based purely on emotions.

I feel very strongly about you, but I know that the only way I can make a rational decision is for us to get some professional advice.

I'm sure you can see the sense in this. I know that between us we have friends who'll be able to help out with somewhere for you to stay, and maybe even some casual work until we can work out a solution.

Q. What are the issues Judy and I need to consider prior to our seeking professional advice?

A. You will need to discuss the following:

- **How** you see your relationship unfolding into the future.
- **Will** Fay's income affect Judy's ability to receive any future Centrelink benefits, if they are a legally defined as a 'de facto couple'?
- **If** one or the other of you is in financial need, what financial support, if any, would each provide to the other?
- **How** will you structure your finances, including your bank accounts and credit cards, to ensure that both of you each has security and protection?
- **If** you purchase joint items, i.e. furniture or vehicles, who owns them in the event of the relationship ending?
- **How** will you be financing holidays and recreational activities?
- **What** financial contribution will each of you provide for day-to-day living expenses?

Personal factors Maria should consider:

- If Maria lends money to Peter, how will this affect her relationship with Markus?
- Does she have any legal right to see her granddaughter if Peter refuses to allow it?

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One Good Deed...

Legal and financial issues for older women considering gifts and loans



Like most mums, Maria had always been ready to lend a hand. What was different this time?

Maria had spent most of her life working at several jobs, whilst raising her kids as a single mother. Eventually she bought her own business in a carpet cleaning franchise...

When Maria finally sold her business she was able to buy her own home and had enough money left over for an investment property that would pay her a solid weekly income, promising a carefree retirement.

Maria also continued to provide generous financial support to her two sons, Peter and Markus. She paid the school fees for all three of her grandchildren and for music lessons and additional tuition.

When Peter was made redundant last month, he approached Maria for some financial assistance with his family mortgage. When Maria had her solicitor draw up a loan agreement, Peter was furious - he said this was unnecessary, and that it just proved she cared more about Markus. He also said that her actions could render his daughter, Emily, homeless and is refusing to let Maria see her granddaughter. He has not refused Emily's school fees for next term.

Questions that Maria might ask:

Q. How can I diplomatically explain to Peter that, this needs to be a loan and not a gift?

A. Explain to Peter that your ability to assist depends on being able to carefully manage your financial assets.

Draw up with your solicitor a loan agreement incorporating a repayment plan that Peter can manage, and explain to Peter that his and Emily's future financial security also depends on this.

Q. Should I insist on a written agreement?

A. Yes. A written agreement is essential, as it will outline:

- how the money is to be repaid,
- when it is to be repaid, and
- whether any interest is to be paid.

A written agreement - signed by both of you and witnessed - will establish that the money you have given Peter is a loan, not a gift, an important point if there are any disagreements in the future.

Q. If a problem occurs and Peter does not repay the money, what can I do?

A. A loan agreement would enable you initiate formal negotiations to reschedule any outstanding repayments, or undertake legal action in the event that disagreements occur, or should Peter and his wife separate.

If this situation arises it is important that you seek legal advice as soon as possible, since there is a limitation period within which you would be entitled to begin legal proceedings.

Q. How will this loan impact on the distribution of my estate upon my death?

A. Having a loan agreement in place, specifying that the debt owed to you by Peter is to be repaid immediately upon your death will ensure that the loan will not impact upon the distribution of your estate.

Q. What other arrangements can I make in case Peter is not in a position to repay the loan at the time of my death?

A. It is important that your will outlines all aspects of your estate, including any loan agreement in place with Peter.

Your will could stipulate that any debt still outstanding by Peter under the loan agreement at the time of your death should be offset from Peter's share in the distribution of your estate. It is very important that you seek legal advice in the drawing up of your will to minimize any problems that could arise when your estate is distributed.