

Moving in with the family?

Answers to questions
on notice - Melissa
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As you get older you may find that living alone in your own home is no longer working for you. You may want to be closer to your adult children for companionship and support.

There are many reasons why older people decide to live with their children.



G RANNY FLATS

You may decide to enter into what is called a 'granny flat arrangement'. This is usually an arrangement between you and your adult child where you make a financial contribution to a property in exchange for the right to live in the property. It might involve the construction of a separate dwelling on your child's property or renovations to the existing property. Or it may involve you selling your home and buying a new home for you and your family to share. It may also include an agreement that they will provide you with physical care and support.

These arrangements often work out well. However problems can arise if you haven't considered what would happen if the circumstances change or if there is a dispute about what you and your family have agreed to.



The problems that can arise if you haven't protected your interests include:

- You could lose all the money you put into the property and you may have to take legal action against your family to recover it.
- The law may consider that you intended to give the money to your child without wanting it back.
- You could end up homeless with your pension reduced.

There are some things you can do to make sure that if this arrangement doesn't work out as planned, your right to a share of the property (your 'legal interest' in the property) is protected. These tips can also help you avoid stressful and expensive legal action down the track.

TIP 1 GETTING

Most people don't think about putting things in writing or getting advice from a lawyer when making agreements with family members.

However it is a good idea to have a formal agreement whenever any arrangement involving significant money or property is involved – regardless of who the agreement is with.

Wanting a formal agreement doesn't mean you don't trust your family. Even if you are confident that your relationship with your family member won't deteriorate there are good reasons why you should have a formal agreement:

It will help you and your family to be clear about each other's intentions and expectations. For example, whether the money you contribute is intended to be a gift or not. Also, your ideas about what support or care you are expecting them to provide may be quite different from what your family is contemplating.

If there is nothing in writing Centrelink might regard your contribution as a gift and your pension could be reduced.

- It will help you and your family talk about and agree on what you want to happen if the arrangement does not work out as expected for either of you.

If there is ever uncertainty about what was agreed the written agreement will help resolve any disagreement.

TIP 2 GET LEGAL ADVICE

You should get independent legal advice before you make any decisions to move in with your family. This means seeing a lawyer who has not also been seen by your family, and speaking to the lawyer without anyone else in the room.

A lawyer can help you with a written agreement and give you advice about what else you can do to protect your interests. The cost of getting this advice may save you much more money in the long term if things went wrong.

TIP 3 OPT FOR THE BEST PLATFORM

When preparing a family agreement both you and your family need to understand what is being agreed so there will be no misunderstandings down the track. It is also important to anticipate what would happen if the arrangement is no longer workable or if things happen in the future over which you have no control.

For example, you should think about what would happen if:

Your child's relationship with their spouse or partner breaks down and they have to sell the house

You start a new relationship and you want to move out

Your health deteriorates and you need to go into a residential aged care facility

Your health deteriorates and you want to stay where you are

You and your child are not able to get along together

There are other things to think about:

Are you intending to give the money as a gift or a loan?

Should your name be on the title to the property as well as your child's?

Will you receive compensation for the contribution you have made to your child's property if the arrangement doesn't work out and the property needs to be sold or you move out?

How will your contribution be calculated?

- How will the arrangement affect the inheritance you leave to your other children?

What kind of personal care and support will your family provide you with, if any?

Has everyone's will been updated to take into account what will happen to the property if there is an unexpected death in the family?

If you have discussed these, and other possibilities with your family and you can agree on what is to happen it will give you peace of mind and hopefully avoid disputes and possible legal action in the future.

T P 4 THINK ABOUT YOUR PENSION

Your granny flat arrangement may affect your pension entitlements. Centrelink has special rules for granny flat arrangements.

For more information about whether you could lose or have your pension reduced as a result of the arrangement, see the Legal Aid NSW brochure '**Changing your accommodation arrangements? ...you could be risking your pension**'.

T P 5 GET LEGAL ADVICE QUICKLY THINGS TO GO WRONG

It is important to get legal advice as soon as there is any disagreement. If you delay getting advice you may lose the opportunity to take steps to protect your legal interest in the property. Also, the law has time limits for certain types of legal action.

A TRUE STORY

Joyce is 70. Her daughter, Deb, suggested that Joyce sell her home and move in with her and her young daughter. Deb said they would build a self-contained granny-flat out the back for Joyce with the money she got from the sale of her home. She told Joyce she would look after her for the rest of her life. This agreement wasn't put in writing. There was no discussion between them about what might happen if the situation changed in the future. Things went well until Deb started seeing an old boyfriend that Joyce didn't approve of. He was a gambler and didn't treat Deb very well. Over time the relationship between Joyce and Deb deteriorated. Deb told her mother that she was selling the house and that Joyce would have to move out. Deb denied that Joyce was owed any money for having contributed to the extension of the home. She claimed the money was a gift. All Joyce's money was in the property that was sold and she had to find a place to rent. Joyce had to take legal action in the Supreme Court to try to get back some of the money she put into Deb's house.

Where to get more information

THE OLDER PERSONS' LEGAL SERVICE (A SERVICE OF THE AGED-CARE RIGHTS SERVICE)

Provides free legal advice and assistance for older people.

Tel: (02) 9281 3600 or 1800 424 079 (toll-free)

www.tars.com.au

LAWACCESS NSW

Provides free telephone legal information, advice and referrals to other services, including to your nearest Legal Aid NSW office, Community Legal Centres, private lawyers and other organisations.

Tel: 1300 888 529 (cost of a local call)

TTY: 1300 889 529

www.lawaccess.nsw.gov.au

If you need an interpreter call the Translating and Interpreting Service (TIS) on 131 450 and ask them to call LawAccess NSW.

SERVICE (FIS)

FIS is a free service provided by Centrelink. FIS can help you to understand how the granny flat arrangement may affect your pension. This is not legal advice.

Tel: 131 021

www.centrelink.gov.au

FINANCIAL INFORMATION

This brochure was prepared by the NSW Older Persons' Legal Education Program. This Program provides legal advice, information and referrals to older people in NSW. To find out more about the Program or to request a free information session on this topic call (02) 9219 5000.

(02) 9219 5028.

This information is correct as at the time of printing, the information may be subject to change (December 2010).

If you need more help, contact LawAccess NSW on 1300 888 529.

Other brochures available:

Helping your family financially?

Understand the risks

Changing your accommodation arrangements?

Will it affect your pension?

Are you experiencing violence or abuse?

You can make it stop

Who will decide for you if you can't decide for yourself?

Think about planning ahead

Are you a grandparent?

Your legal questions answered

Why make a will? A guide to making a will