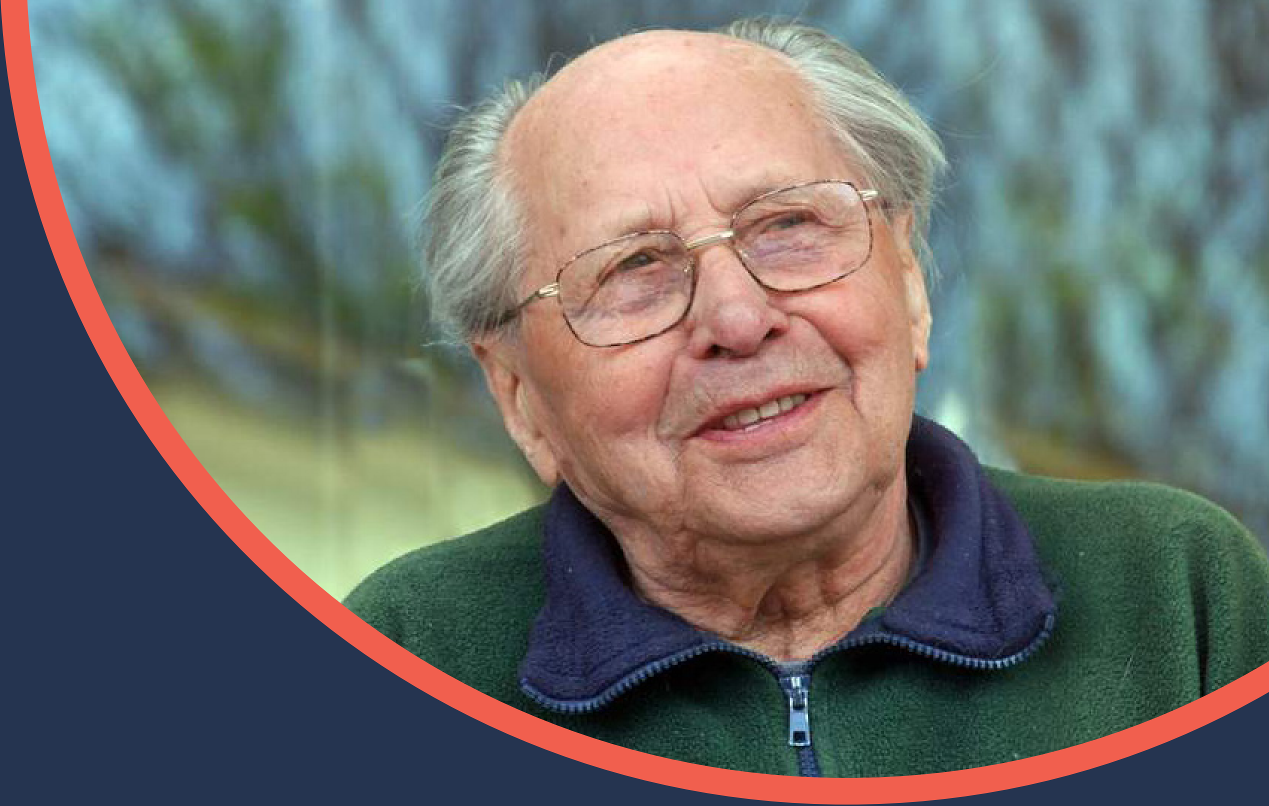


Centrelink and the age pension

- Summary
- Gifts and loans
- Acting as guarantor on a home loan
- Granny flat interest
- Granny flat arrangement exemption from capital gains tax

compass GUIDING ACTION ON ELDER ABUSE an EAAA project

Summary

> *"Older people can receive the age pension through Centrelink/Services Australia, with the amount received dependent on their income and assets. A person's home is excluded from the assets test."*

Gifting money or property to a family member or other person, or moving house, can affect the amount of age pension a person receives. It can also affect the amount a person is required to pay for aged care services.

Centrelink has strict rules in place to ensure that people do not dispose of their assets by gifting them to family members or others in an effort to influence their eligibility for the age pension or aged care costs.

A person's eligibility for the age pension is continually reassessed. So any major change to a person's income or assets—including having a loan repaid or having to pay out a loan on behalf of someone else—can affect the ongoing rate of pension they receive.

Any person considering making a gift of cash or property to a family member or anyone else should carefully consider the consequences, inform Centrelink of their decision, and keep relevant documentation.

Gifts and loans

Centrelink has strict rules in place to ensure that people do not dispose of their assets by gifting them to family members or others in an effort to influence their eligibility for the age pension or aged care costs. However, these rules also recognise that older people may have a genuine wish to help their family members by giving them cash or signing over property.

A person can give away up to $30,000 over a 5-year period before it will affect their assets test. Older people should be aware that it is considered a gift if they sell or transfer an income or asset and get less in return than it was worth.

Acting as guarantor on a home loan

An older person sometimes offers, or is asked, to act as guarantor for a family member's home loan. This means that the older person guarantees that their family member will be able to service the loan, and they do this by using the equity in their own property.

Acting as guarantor is not an 'assets for care' arrangement, as the family member is not promising to provide anything to the older person. However, as it is a decision that can risk the older person's financial security, it is recommended that the older person follows the family agreement advice: discuss what will happen in unforeseen circumstances, seek independent financial advice, and ensure all details of the arrangements are documented.

Granny flat interest

The granny flat interest is an exception to social security law to ensure that when an older person transfers title of their property, proceeds of their property, or other assets, to a family member or similar in return for care and accommodation (that is, they enter into a family agreement), it does not affect their eligibility for the age pension.

For the granny flat interest to apply, the place the older person has moved into (or stays in) must be a private home and, in return for paying with the proceeds or assets, the person must have been promised the right to live there for the rest of their life.

Centrelink must always be informed of changes to the older person's living arrangements if they are receiving the age pension, and written documentation will be required for its records.

Recent changes to capital gains tax

In June 2020, legislation was passed to encourage people to have formal written agreements when entering into living arrangements with family.

This change ensures that capital gains tax (sometimes called simply 'CGT') will not apply to the creation, variation or termination of a formal written granny flat agreement. The change is hoped to dissuade people from keeping family agreements informal and undocumented as a way of avoiding capital gains tax.

Financial Information Service

Services Australia/Centrelink runs the free Financial Information Service (https://www.servicesaustralia.gov.au/individuals/services/financial-information-service), which can assist with helping people better understand their financial affairs, including financial implications for government benefits. For older people, it can help with understanding the implications of any family agreement or gifting on any government benefits as well as aged care costs.

The Financial Information Service can help with:

- making informed financial decisions
- understanding the results of decisions in the short and long term
- preparing for retirement
- taking control of finances to increase lifestyle choices.

Gifts and loans

Gifts

A person's assets (aside from their principal residence) can affect their eligibility for the age pension and the rate of pension they receive. Centrelink has strict rules in place to ensure that people do not dispose of their assets by gifting them to family members or others in an effort to influence their eligibility for the age pension or aged care costs. However, these rules also recognise that older people may have a genuine wish to help their family members by giving them cash or signing over property.

> *"It is considered a gift if the older person sells or transfers an income or asset and gets less in return than it was worth."*

For example, if an older person sells their house to a family member for significantly less than it is worth, the difference (in what the family member paid, and what the market value of the house is) would be assessed by Centrelink as an asset.

Any gifts a person makes within the preceding 5 years may count in their assets and income tests for the age pension or aged care costs. A person receiving (or about to start receiving) the age pension can give away up to $30,000 over a 5-year period without it affecting their pension. Any amount over $30,000 will be counted, for 5 years, as a person's asset and included in the asset test. The higher a person's assets, the lower the age pension rate they are entitled to.

> *"The older person must inform Centrelink of any gifts, sales or transfers within 14 days, to avoid possible overpayment of benefits."*

Loans

A loan (from an older person to a family member) is not included in the gifting amount. However, this needs to be a genuine loan and Centrelink will require proper documentation and evidence as a verbal agreement is not enough. The impact of the loan, income derived from repayments, and whether the loan is forgiven or repaid, may affect the income and assets test of the age pension.

If the older person forgives a loan owed to them, or pays off somebody else's loan (for example, paying off a child's business loan, having acted as guarantor), it may be included in the assets test.

> *"If a family member has stopped making repayments for a loan, the older person can take legal action to recover the loan."*

This must commence within 6 years, which is counted either from the first date repayment of the full amount could be demanded or, if there is no formal agreement including scheduled repayments, from when the money was given.

The law presumes that money transferred from a parent to a child is an advancement. This means that the law will presume the money was a gift unless the parent can prove otherwise. The onus is on the older person to prove the transfer was a loan (rather than the family member to prove it was not), which is why written documentation of the terms of the loan is always encouraged.

Sometimes the family member may be bankrupt or unable to repay the loan without putting themselves (and their own children) in financial stress. This can make it difficult for the older person to pursue the loan, even when they have been wronged, as they may not wish to cause further conflict or stress for their family.

Questions for the older person

If a family member asks for financial assistance, some questions the older person should consider include:

- If I gift this money, how will it affect my pension, tax or aged care costs?
- If I loan this money, have I been clear when it needs to be paid back?
- Have I considered what might happen if they cannot pay back the loan? Can I live without this money?
- Will other family members expect similar gifts?
- How might this gift affect my will or estate and what I can leave to others?
- Do I have written documentation to show this was a loan, so that later on my family member cannot tell others they thought it was a gift?

Gifting resource

This Caxton Legal Centre factsheet contains an excellent list of questions that an older person could ask themselves when gifting or loaning money:

https://queenslandlawhandbook.org.au/factsheets-and-self-help-kits/financial-gifts-and-loans/

Case Study

Mr and Mrs Day, an elderly couple from a non-English speaking background, were on the age pension. Their youngest son asked them to help him borrow money to purchase some properties he wanted to develop. At the time, Mr Day was in the early stages of dementia. Mrs Day queried how they could assist their son as low-income pensioners. Their son assured her with words to the effect, 'Don't worry, you just sign the papers, I will make the payments to the bank.' The papers were a loan contract for $600,000 and a mortgage was subsequently registered against Mr and Mrs Day's home. Mr and Mrs Day signed these documents at the office of their son's solicitor.

Two years later the son advised Mr and Mrs Day that he was unable to keep up the repayments on the loan and that they would have to sell the house to discharge the debt. Mr and Mrs Day reluctantly put the house up for sale and the proceeds of the sale settled the balance of the loan and discharged the mortgage. Their eldest daughter took them into her home as they had nowhere else to go.

Centrelink found out about the sale of Mr and Mrs Day's home and suspended their pensions pending an investigation about their future entitlement. Mr and Mrs Day were wholly unaware of the requirement to inform Centrelink about the loan borrowed against the equity in their home.

Unfortunately, Centrelink regarded the loan funds as their asset. As the total loan funds were above the Centrelink asset threshold, Centrelink determined that Mr and Mrs Day had not been entitled to the full pension from that date and informed Mr and Mrs Day that they had been overpaid since the date the loan was taken out. Mr and Mrs Day were required to repay the overpayments and their future pension entitlements were reduced by about 50 per cent.

Centrelink also treated the proceeds of the sale of the house as a 'gift' to their son. The fact that the loan had been for their son's benefit and that they had used the money from the sale of their home to pay out the loan made no difference. The proceeds of sale exceeded the allowable amount for gifts, so Centrelink treated the proceeds as if they were Mr and Mrs Day's asset and deemed that they had received income. This exceeded the income allowable for a full pension and their pension was reduced accordingly.

Legal Aid NSW assisted Mr and Mrs Day by persuading Centrelink that the sale of the house was not a gift to their son but a loan. Even when this was accepted, Mr and Mrs Day were still getting a reduced pension. Legal Aid NSW then had to make an application under a hardship provision on the basis that the loan was 'unrealisable'.

In the first instance, the application was refused because Legal Aid NSW had not provided evidence that legal action had been taken against the son to recover the loan. However, as Legal Aid NSW was in fact suing the son, Centrelink agreed to restore Mr and Mrs Day's pensions pending the outcome of the legal proceedings.

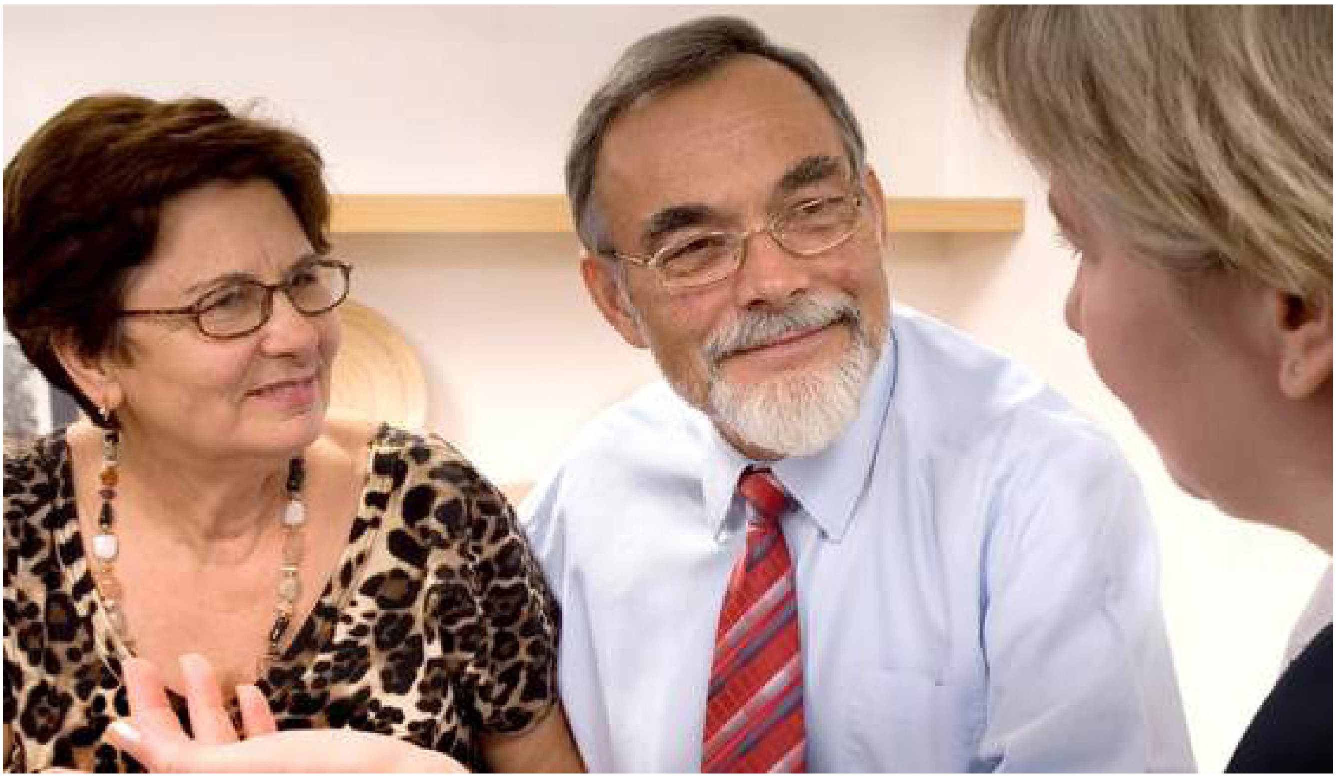
Acting as guarantor on a home loan

> *"An older person sometimes offers, or is asked, to act as guarantor for a family member's home loan. This means the older person guarantees that their family member will be able to service the loan, and they do this by using the equity in their own property."*

As no money actually changes hands, guaranteeing is an attractive option for the older person who wants to help their family member get into the property market. However, as the guarantor agrees to offer part of their own home equity to top up the family member's deposit, it does mean their own home is on the line if their family member is unable to make the loan repayments.

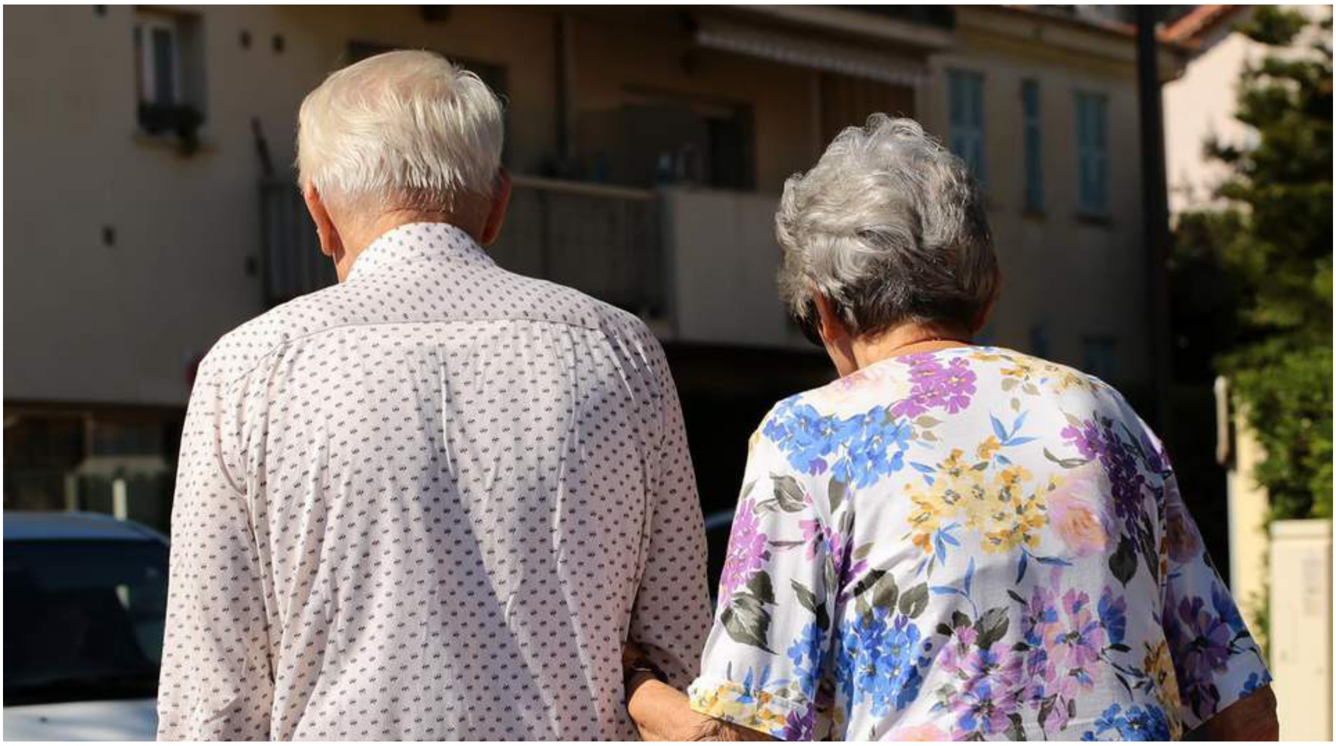
Acting as guarantor is not an 'assets for care' arrangement, as the family member is not promising to provide anything to the older person. However, as it is a decision that can risk the older person's financial security, it is recommended that the older person follows the family agreement advice: **discuss what will happen in unforeseen circumstances, seek independent financial advice, and ensure all agreed details of the arrangements are documented.**

Becoming a guarantor will affect a person's own borrowing power, so the guarantor should carefully consider their own future financial and loan plans. If the older person has to pay off the loan for which they were guarantor (in the event that their family member defaults), the amount paid will be included in the age pension assets and income test, and may affect the rate of the older person's entitlement.



> *"Acting guarantor is not a short-term prospect—the responsibility does not end once the loan has been issued. The guarantor must stay on the loan until it is either paid off or refinanced, or some other special arrangements are made where the loan holder has built up enough equity."*

Any person considering acting as guarantor for a family member should seek independent financial advice and give proper consideration to what would happen if the family member is not able to service the loan in future.

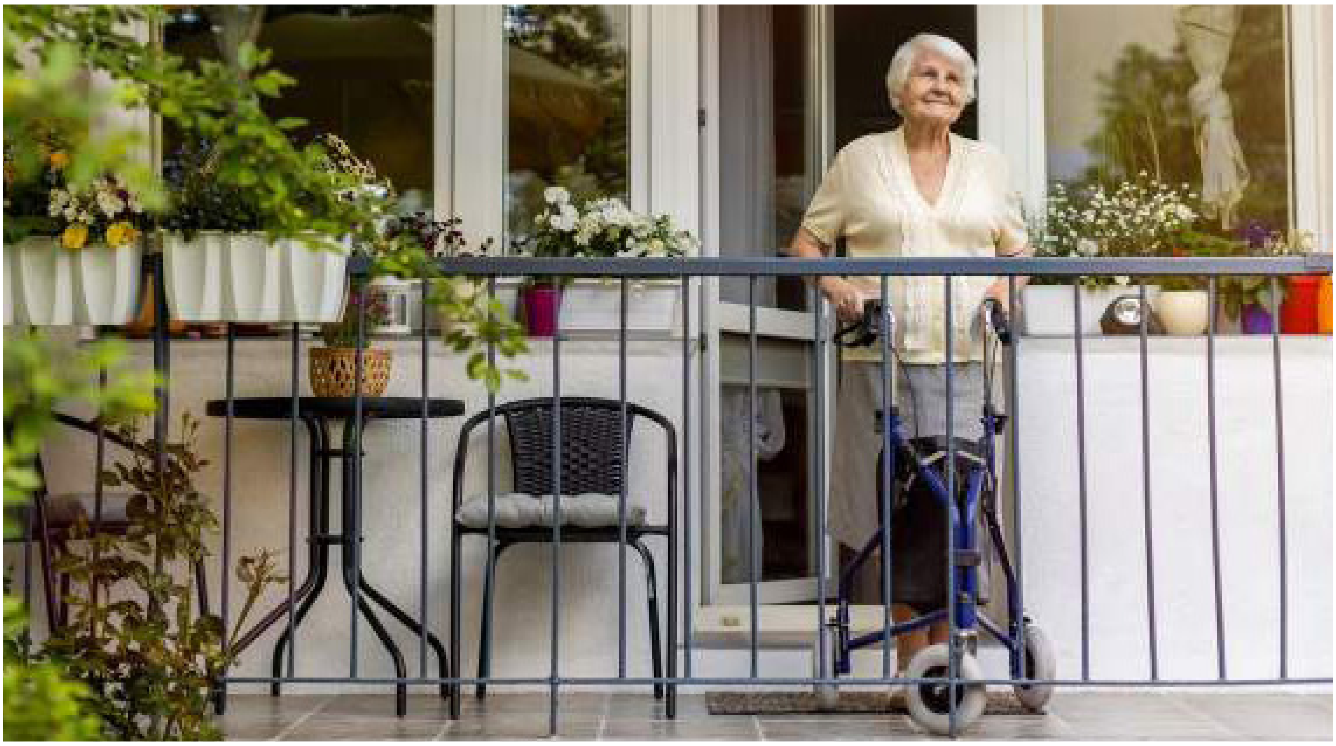


Case Study

Mollie and Andrew wanted to buy a home worth $800,000. They had managed to save $40,000, which was 5% of the necessary deposit. As they needed a 20% deposit to avoid paying lenders mortgage insurance, Mollie's parents, Rita and Tony, agreed to guarantee the necessary $120,000 by offering equity in their home.

Everyone was happy with these arrangements, but when Mollie did not go back to work after the birth of their second child, Andrew struggled to make the repayments. They asked Rita and Tony for $20,000 in order to keep up their loan repayments.

Rita and Tony were hesitant because they could see that Mollie and Andrew went on expensive holidays and always bought the latest gadgets. However, they reluctantly agreed to give the money, feeling that they had little choice because if Mollie and Andrew defaulted on the loan, Rita and Tony would be liable.



Granny flat interest

An older person's principal place of residence (the home they live in, rather than any investment properties or holiday home) is exempt from the age pension assets test. This means the value of their home does not count towards their assets and potentially limit their entitlement to the age pension.

> *"If a person sold their family home and retained the proceeds, the value would ordinarily become part of their assets."*

For example, if a person sold an $800,000 home and bought a $480,000 apartment, the difference of $320,000 would now be counted as part of their assets. They would need to inform Centrelink of this change in their finances and it may mean they are no longer able to receive the age pension, or that their pension rate is reduced.

This can discourage older people from downsizing their home and may contribute to people staying in their family home for longer than they would like. It could also discourage people from moving into a family member's property to live.

To counter this, exceptions have been made under social security law to ensure that when a person sells or transfers their primary residence as part of a family agreement, they do not lose their pension. This is referred to as a 'granny flat interest'. Even though the older person is not on the title of the home in which they are residing, their contribution to that home (which is their primary place of residence) is considered exempt from the assets test.

> *"A granny flat interest does not need to involve a granny flat or self-contained unit. It simply means that the older person has transferred money or assets to a family member in order to live in their property."*

For the granny flat interest to apply, the place the older person has moved into (or stays in) must be a private home and, in return for paying with the proceeds or assets, the person must have been promised the right to live there for the rest of their life.

A person who sells their home and uses the proceeds to co-purchase a property (for which they are on title) with their family member can also remain eligible for the age pension. However, the criteria for valuing the older person's interest in this situation is not as generous as the granny flat interest.

An older person considering selling their primary home and purchasing with, or living with, a family member should seek financial advice or contact Financial Information Services to understand the implications on their pension.

Case Study

Elizabetta was determined to stay living in her own home until she died. Her son, Kalevi, encouraged her to sign over the title of the home to him as it would be beneficial to his standing with the bank and said she could live there for the rest of her life. Elizabetta was happy to support her son and decided that because he will inherit the house one day, this posed no problem.

She informed Centrelink, who confirmed she had a granny flat interest in the home, so it did not affect her age pension.

When Kalevi's business collapsed, the bank informed him he needed to sell Elizabetta's home to service his debts. Elizabetta was forced to leave her home, the neighbourhood she had lived in for 60 years, and her beautiful garden and move into Kalevi's spare room on the other side of the city.

Case Study

Nina and Joe were both in their seventies. They lived in their own home, which was valued at $950,000. They were finding it difficult to service the $280,000 mortgage, as their only income was the age pension.

Nina and Joe happily came to an agreement with their daughter, Marie, and their son-in-law, Pete. Nina and Joe sold their house and contributed $600,000 to Marie and Pete to purchase a new home, big enough for them all to live in.

Nina and Joe informed Centrelink, which noted that this contribution in return for right of residence formed a granny flat interest and confirmed that they would continue to receive their pension. Nina and Joe provided Centrelink with written documentation of the arrangements.

Unfortunately, after 5 years of living together and tensions rising, Marie and Pete demanded that Nina and Joe move out. Nina and Joe asked Marie to return their contribution but Marie refused, telling them she thought it had been a gift.

Because Nina and Joe had informed Centrelink and provided written documentation, they could prove that the $600,000 was not a gift but a contribution in return for care and accommodation. They engaged a lawyer, who negotiated with Marie and Pete to sell the property and return the payment as they were no longer providing the promised care and accommodation to Nina and Joe.

Granny flat arrangement exemption from capital gains tax

There are many reasons why people do not formalise a family agreement with written documentation, such as trusting their family, not expecting things to go wrong, and not wanting the arrangements to have negative financial implications. However, a family agreement without documentation can prove risky for the older person, and since the Australian Law Reform Commission inquiry into Elder Abuse, efforts have been made to encourage people to formalise agreements.

> *"In June 2020, legislation was passed to encourage people to have formal written agreements when entering into living arrangements with family."*

This change ensures that capital gains tax will not apply to the creation, variation or termination of a formal written granny flat agreement. The change is hoped to dissuade people from keeping family agreements informal and undocumented as a way of avoiding capital gains tax.

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