compass
GUIDING ACTION ON ELDER ABUSE
an EAAA project

Family Agreements

A Guide

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What is a family agreement?

Summary

A family agreement is an arrangement between an older person and someone else (usually a family member, friend or carer) regarding care and living arrangements. Often called an 'assets for care' arrangement, it involves the older person exchanging their property or assets in return for housing and/or care as they age.

The agreement should be mutually beneficial. For the older person it might mean no longer living alone as they age, being closer to grandchildren, and avoiding moving into residential aged care. For the family member (usually a child of the older person) the benefits might be the financial boost, remaining close to their parent(s) and the related peace of mind, and having help with childcare and domestic work.

Some common family agreement situations include:

- purchasing a property and sharing a home
- building an extension or granny flat on a family member's property
- an older person transferring ownership of their property but continuing to reside there
- making financial agreements such as loans, gifts and home loan guarantor arrangements.

Family agreements don't always involve the direct transfer of assets for care. They can include any agreement within a family about intergenerational living and care arrangements, such as an older person offering housing and care to an adult child in need, or parents migrating to be closer to their children and help with their grandchildren.

Issues can arise with family agreements when the potential consequences of the arrangements have not been thought through or an unexpected change occurs. Most people trust their family members and believe they'll do the right thing by them should the arrangements not work out. Unfortunately, this can mean people don't seek the independent legal advice that might protect their rights and finances when things go wrong.

Having safeguards in place is particularly important for older people, who are usually on low or fixed incomes during retirement. Elder abuse can sometimes occur in the context of family agreements, with devastating personal and financial consequences for the older person.

Elder abuse includes an older person being pressured into making a family agreement or deliberately being taken advantage of by the arrangements that are made. It can occur when the promised care or housing doesn't eventuate or when circumstances change to the detriment of the older person.

Where a family agreement has broken down, there are some legal and civil options available to help people resolve the dispute. The older person has a better chance of seeking redress and recovering financial contributions if the arrangements have been formally documented.

Older people should always seek independent legal and financial advice before entering a family agreement, because often it affects their tax, age pension or ability to pay for aged care services.

What is a family agreement?

> *'Family agreement' is an umbrella term for any arrangement between an older person and someone else (usually a family member, friend or carer) regarding care and living arrangements.*

Often called an 'assets for care' arrangement, it involves the older person exchanging their property or assets for housing and/or care as they age. This might be by sharing accommodation, co-purchasing property, making loans or cash gifts, providing child care or aged care, and more.

A family agreement is often informal and verbal, entered into in the spirit of care and mutual benefit. However, a lack of documentation or any record of shared expectations can cause problems if the relationship breaks down or one of the parties does not fulfil their promises. For this reason, all family agreements should be documented, so that they become a 'formal' family agreement.

There is no Commonwealth or state-based legislation governing these family agreements (other than that relating to general contracts), and they can take a number of forms, including (among others):

- co-ownership agreements
- granny flat agreements
- loan agreements
- deeds of family arrangement.

If the agreement is formalised by being documented (following legal advice), there is a better chance that what has been agreed on by the parties can be enforced or that an older person's contributions can be recouped if the arrangement ends.

Sometimes family agreements are entered into in bad faith by family members who wish to benefit from the older person's desire for care. Documenting a family agreement, even those that are potentially disadvantageous to the older person, can help the older person seek redress if the arrangements become abusive.

When might a family agreement be entered into?

A family agreement should be considered over a period of time so that everyone involved can be sure it's the best thing for each of them.

Later life can be a time of great change and the decision to enter into a family agreement may come after a crisis or upheaval for the older person, such as the loss of a partner, age-related illness or increased frailty, financial pressures after retirement, or a period of extended loneliness or stress.

Most people want to remain as independent as possible and live at home as they age. While there are many that can give support for daily activities such as meals, cleaning and personal care, they aren't quite the same thing as help from willing family members or friends.

> *"But even with the most helpful and available family, many older people can feel like their increased needs make them a burden. Some people may believe that making a financial contribution to their family in return for care alleviates this feeling."*

In addition, it gives them the opportunity to make a tangible impact by sharing the wealth that they have acquired over their lifetime and intend to pass on when they die. For many people, a family agreement is a way of distributing their estate at an earlier point, when they feel their children can most use it.

There is much joy that can come from multiple generations of a family living together: closer relationships across the generations, more hands on deck to help out, and a sharing of resources that might allow everyone to live comfortably.

There is one important way that all happy families are alike: they think that they will always be happy, and because they harbour genuine good intentions, they often don't plan for the possibility of things going wrong. But even for families who have no history of disagreement or conflict, a formal documented family agreement (and the discussions necessary to get there) can be beneficial.

Before taking the leap, everything should be on the table for discussion—finances, care arrangements, future changes, potential relationship breakdown, child care expectations.

Overall, family agreements, particularly 'assets for care' arrangements, can be a good way for older people and their children to address the challenges both parties might be facing at this point in their lives.

However, they work best if everyone considers whether the arrangement meets all their needs, now and in the future, and ensures that it is formalised in a way that can help avoid, or resolve, future disputes.

How does a family agreement relate to elder abuse?

An older person contributing their assets to their family in return for care and housing as they age is not, in itself, elder abuse. But sometimes elder abuse will arise within the context of a family agreement, and the effects can be devastating on a personal and financial level.

When family agreements go wrong, older people can be left without a home and financial security. Depending on the financial arrangements, the fallout may affect their age pension entitlements, tax and aged care options.

Most devastatingly, when an agreement breaks down, older people risk losing relationships that are important to them (including with grandchildren) and feel ashamed about what has happened, which leads to further stress, anxiety and depression.

Elder abuse in the context of family agreements can take many forms. The promised care might not eventuate, resulting in neglect. Family conflict or violence might make the arrangements untenable, or the older person might have been pressured to take part and feel trapped.

Alternatively, unexpected circumstances might arise that change everyone's plans, and elder abuse can occur if the older person is expected to take the brunt of the difficulties or when they try to assert their rights.

Elder abuse services in each state and territory provide information and support for people to address the abuse and remain safe. Civil litigation and dispute resolution services can offer a way forward when the arrangements have broken down, but this can be a difficult and costly process that may not deliver the outcomes desired.

In order to avoid being the victim of elder abuse, the older person is encouraged to carefully consider the proposed agreement, discuss it with family and others, and seek independent financial and legal advice.

"Family members contemplating entering into a family agreement with an older person should make every effort to ensure the arrangements are mutually beneficial and that consideration has been given to the older person's future needs should the circumstances change or the agreement dissolve."

What situations require a family agreement?

These are some of the most common scenarios in which family members of different generations (often, ageing parents and their adult child/ren) might come to a family agreement over living arrangements, care, assets and support.

While many families might think a verbal or informal agreement is enough, a formal, or documented, family agreement is always beneficial, particularly if the arrangements later change or fail.

Co-purchasing property

> *"Where an older person sells their house and puts the proceeds towards purchasing or building a new property to live in with a family member. While both the older person and the family member might be on the property title, it is common for the house to be only in the name of the family member."*

A common scenario is when an older person puts the proceeds of the sale of their home towards purchasing or building a new property with another family member (often one of their adult children). This scenario often comes about when an older person wants to help their child get into the property market, while also avoiding having to move into aged care.

The new property might be a single house that everyone lives in together, or it might have a self-contained flat or separate dwelling for the older person.

Part of the arrangements might be an understanding that the family member will provide care for the older person as they age. It may also be agreed that the older person will provide child care for their grandchildren or domestic help around the shared house.

The house may be purchased in the name of one or all people involved. Some different purchasing arrangements include:

- the land being purchased by one person and the build financed by another
- the older person providing the majority of the purchase funds, with the family member taking out a mortgage for the remainder and being the sole owner on title
- both the older person and the family member being owners on the title (in this case, even if the family member has agreed to be responsible for the mortgage repayments, the older person may find themselves required to step in if the repayments aren't made)
- the older person being listed on the title as a 'joint tenant' (which means that upon death, their share goes to the remaining title holders and does not form part of their estate)
- the older person being listed on the title as a 'tenant in common' (in which case their share reflects their contribution and, upon their death, will become part of their estate and be distributed as per their will).

Regardless of the particular details, it is important for everyone involved to be clear on what the new arrangements mean for them, both now and in the future, and for a formal agreement to document them. Formally documenting the agreement may also help to ensure transparency about the arrangements with other family members and avoid future disputes (for example, between siblings).

Whether the older person and family member are both on the property title, or only one of them is, a formal family agreement could detail each party's contribution at the point of purchase and decisions about proportional ownership, which can be useful if the property needs to be sold and the proceeds divided at a later time.

A formal agreement can also record any decisions about upkeep, access and use of the shared property, and other expectations about the new living arrangements.

If only the family member (and not the older person) is on the property title, Centrelink's 'granny flat interest' rules may apply to the older person's age pension asset test. (The term refers to the living arrangement—making a cash contribution to live in someone else's home—rather than the type of accommodation known as a 'granny flat'.)

Case Study

When she was 69 years old, Elif decided to be proactive about planning for her later life. After talking it over with her family, Elif sold her unit for $640,000 and contributed $500,000 to her son Adem, who used the money to build a 4-bedroom house with a self-contained unit on the lower floor. Elif was excited to spend the rest of her life with her son's family, watching her grandchildren grow up.

Elif picked up the children from school 4 days a week and cooked the family meals every second night. She enjoyed spending her days visiting friends and going to the local Turkish club. Elif saw less of the grandchildren when they were in high school, but she was happy to be close by.

When Adem's wife Sara started a new job, Elif helped out more with household chores, but she soon found she was unable to keep up with Adem and Sara's expectations. In time, Adem refused to drive Elif to her club until she had completed the household tasks and he started to lock the door connecting her unit to the family home so she could not drop in to see her grandchildren.

After ten years, Adem and Sara told Elif she had to leave because they needed more room for their growing boys and it was selfish of her to take up so much space. They claimed that the arrangements were only ever meant to be temporary. When Elif argued with them, they told her she must be having problems with her memory and that the money she had put into the house was a gift—it did not mean she could stay for ever.

Elif reluctantly decided to move into aged care. However, when she enquired, she found that because she had no assets, she could not afford the aged care facility where some of her friends were. Instead she had to move to a facility further away, where everything was unfamiliar.

Building an extension or granny flat

> *"When an older person sells their home and contributes most of the proceeds to their family member to build a unit or extension for the older person to live in as they age."*

Another common scenario is when the older person's assets (or proceeds from the sale of their home) are used to build an extension or self-contained flat—sometimes called a 'granny flat'—on a family member's property.

In this case, even if the older person has paid all expenses, the extension or granny flat belongs to the property owner. This ruling even applies to units that are fully self-contained and have separate access, unless they were built under a separate title or ownership. This is an important consideration in case the older person ever needs to move elsewhere.

Local councils may have different requirements and allowances for granny flats. Some may only allow the flat to be used by 'dependent persons' and not as rental accommodation, which will give it a lower value than expected (perhaps even less than it cost to build) if the property is sold in the future.

When an older person contributes money to a family member in return for care and accommodation, Centrelink's 'granny flat interest' rules may apply, ensuring that the older person's age pension is not affected.

However, if the amount contributed by the older person is more than the amount that Centrelink considers reasonable for the arrangements, the older person's pension entitlement may be affected. People considering this type of accommodation arrangement should contact Centrelink to confirm the policies that will apply to their own circumstances.

For an extension or granny flat build, a formal family agreement documenting the older person's contribution and expectations is important in case the property needs to be sold in the future.

Case Study

Phuong and Lily were having trouble making their mortgage repayments after Phuong hurt his back and could no longer work. After discussing options with their son, Yen, they sold their home, paid off their loan and used $150,000 of the proceeds to build a unit in Yen's yard.

After Phuong and Lily had lived there for 8 years, Yen told them his family had outgrown the home and wanted to buy something bigger. When the house sold, Yen returned the $150,000 to his parents and used the remaining proceeds from the sale to buy a new, larger house for his family.

Despite the unit improving the value of the property, Phuong and Lily did not receive any higher return on their contribution and had to move into a private rental because they did not have savings to buy a new home.

Property transfer

> *"When an older person transfers their property to a family member with the understanding that they can continue living there until they die or enter aged care."*

Sometimes an older person may transfer ownership of their property to their family member, with the understanding that the older person can keep living in the property for the rest of their life (this is sometimes called the 'right to reside').

Often the transfer might be instigated by the family member, who wants the security of the house for a loan. It might also come about when the older person is trying to minimise the assets that will be considered when they have to pay for aged care.

Something to consider with a property transfer is that it can create conflict with other family members (particularly those who stood to inherit from the older person). Additionally, depending on the time frame of the transaction, the transfer may still be assessable as a gift in relation to aged care, tax or the age pension. There might also be stamp duty and other tax implications.

However, one of the biggest risks is that if the family member decides to sell the property, or if they default on their loan and the bank seizes the house, the older person has no recourse.

Case Study

Angelo was determined to remain living at home as long as he could. His son, Stephen, supported him in this and organised some extra care services to help maintain Angelo's independence. When Stephen asked if he could use Angelo's house to secure a loan for his new business, Angelo was happy to oblige. He was confident that his son's business would be a success.

Six years later, Angelo was confused about why Stephen kept pressuring him to move into aged care when he was happy where he was. Eventually, Stephen had to confess that the house was to be seized by the bank as his business had failed. Angelo was devastated to find out he had no choice but to move into residential aged care.

Financial agreement (loans and gifts)

> *"When an older person lends or gifts money to a family member, including being guarantor on a home loan."*

An older person might gift or lend money to a family member, commonly in the form of cash, money for a house deposit, or contributions to a mortgage. It is always best to be clear about whether and when the money should be repaid, otherwise the family member might assume that it is a gift, particularly when it's from an older person to their child.

Gifting money can have an impact on the older person's age pension entitlements, their tax and their ability to afford aged care support.

If the money is a gift given with the expectation that the older person will receive care and accommodation in return, it is best referred to as a 'contribution' and a formal family agreement should be documented.

Sometimes an older person is asked to use the equity in their home as a guarantee to assist a family member taking out a home loan. Although no money changes hands, being a guarantor can affect a person's own borrowing power and make them responsible for the debt if the family member is not be able to repay the loan.

Intergenerational households

There are other living arrangements that can be considered family agreements. As they may be short-term and often do not involve a financial contribution or exchange, they are more likely to be informal and undocumented.

Sharing a home with an adult child

> *"Adult children sometimes return home to their parent(s) for housing, financial and other support. A family agreement can help ensure expectations and contributions for these arrangements are made clear from the beginning."*

There are many reasons why multiple generations of a family might live together for long or short periods. Most examples of these arrangements focus on situations that have come about because the older person is in need of care and support as they age. But in many instances, it is in fact the older person providing the care and support.

When things go wrong, it is not unusual for adult children to return to their parents' home. This might happen when the adult child:

- has recently separated
- has been the perpetrator or victim of family violence
- is struggling with health issues, mental illness or substance abuse
- is experiencing financial stress or unemployment
- is saving for a house
- has returned from overseas, particularly during the COVID-19 pandemic.

While it is rare in these situations for a formal family agreement to be drawn up, it's wise to have discussions and make a written agreement to ensure everyone has the same expectations of the situation. These might cover how long the family member is planning on staying, what financial contributions they will make to household costs, and what tasks are expected of them.

Problems can occur when a family member overstays their welcome, becomes abusive or does not keep their end of the agreement. These problems may be easier to resolve if some ground rules have been set at the beginning.

Contributory Parent visas

> *"Sometimes people migrate to Australia to live with and assist their children and grandchildren. The visa and housing decisions can be similar to those of family agreements and involve a merging of finances, living arrangements and housing."*

Some older people decide to migrate to Australia to be closer to their children and grandchildren. The most common way to do this is on a Contributory Parent visa, which allows the older person to live permanently in Australia. One of the conditions of this visa is that the family in Australia have to provide an 'Assurance of Support', which is similar to a bond, for their parent.

Because of these sometimes complicated financial arrangements and the arrangements made between different generations of the family about housing, accommodation and care, a Contributory Parent visa can be seen as a form of a family agreement. And like other family agreements, all parties can benefit from having open discussions and documenting contributions and expectations.

While all families hope for a positive experience, unforeseen circumstances, including family violence, can lead to arrangements breaking down. When this happens, the older person, who is relatively new to the country and may have limited assets, is in a vulnerable position.

What should a family agreement include?

- Summary
- What is a ‘formal’ family agreement?
- Is there a need for a formal family agreement?
- What circumstances might change?
- What type of things should a family agreement include?

Summary

> *"While any agreement about care, living arrangements and assets within a family might be considered a family agreement, a formal family agreement is the written documentation (drafted by a lawyer) detailing what has been agreed."*

This can help prevent the older person being taken advantage of before entering into the agreement, as well as provide direction and safeguard assets should the agreement break down, which could happen for any number of unforeseen reasons.

The process of writing down and formalising the agreement encourages families to discuss what the arrangements mean for each party and what the expectations of each other are, both at the time of signing and in the future.

While a formal family agreement does not have to record every aspect of the arrangements, any documentation can help with resolving disputes in the future, so the more detail included in the family agreement, the better.

What is a 'formal' family agreement?

While any agreement about care, living arrangements and assets within a family might be considered a family agreement, a *formal* family agreement is the written documentation (drafted by a lawyer) detailing what has been agreed.

Having a formal—or written-down—family agreement makes sure the arrangements are understood and agreed to by everyone. The process of writing it down can help families have the necessary conversations to ensure everyone is happy with the plan and that they intend to comply with it. Having a formal family agreement can also make it easier to resolve a dispute if things do go wrong and the arrangements break down.

Is there a need for a formal family agreement?

Most people assume that there is no need for a formal document: as family, they trust each other and believe that if a problem arises they will be able to negotiate a solution. But every family will benefit from formalising a family agreement.

Insisting on a formal family agreement can discourage unscrupulous family members from taking advantage of the older person. It also encourages the entire family to be aware of the agreed arrangements, so they don't become a point of conflict later.

If the agreement breaks down, the older person's options will depend on what the arrangements were (what was promised, discussed and understood), what evidence there is that this family agreement was in place, and the circumstance and nature of the breakdown (what went wrong).

> *"Without a formal agreement or documentation, it can be difficult for the older person to enforce an interest they have in a property or recover any money they have contributed. This can make a person very financially vulnerable (particularly if they have limited income) when it comes to affording a new place to live."*

There is no single template or type of formal family agreement. It may be a co-ownership agreement, a granny flat agreement, a loan agreement or a deed of family arrangement, among others. It is always important to get legal assistance to prepare a document that both parties expect to be binding. A written agreement may be no better than a verbal one if it is not properly drafted by a lawyer.

What circumstances might change?

> *"Family agreements are usually entered into with a positive mindset and genuine intentions of mutually beneficial arrangements. Because of this, the possibility of things going wrong is often overlooked and, therefore, not planned for. As a result, conflict can arise if the arrangements end and each party has a different idea about what their contribution entitles them to."*

Unfortunately, life has a habit of throwing up unexpected challenges. Some things that might go wrong include:

- **the breakdown of the relationship between the parties.** Sometimes, despite promising beginnings, the arrangements just do not work out and there is so much conflict between the older person and the family that one or the other party seeks to end the agreement.
- **the breakdown of other family relationships.** The family that the older person is living with may experience their own conflict or breakdown and decide to separate.
- **people not doing as they promised.** Examples include the family member not providing the care promised to the older person, such as taking them to appointments or providing meals. It may also include the family member being overprotective of the older person, taking over their decision-making and deciding what social activities they can participate in.
- **age-related illness and disability.** The older person might require more care and assistance than the family members are able to give, or may no longer be able to provide the child care and domestic support that they previously did.
- **unexpected death or illness.** The family member may predecease the older person.
- **financial stress.** The family member may need to borrow against their mortgage, sell their assets to access cash, or relocate for employment opportunities.
- **changes in circumstances.** The grandchildren may no longer need the care or supervision provided by the older person, and the family might cease to see any benefit in the older person being around.
- **new relationships.** The older person might meet a new partner and wish to live with them, or the family member may start a new relationship and wish to move away.

Case Study

Six months after being widowed at 75, Conrad suffered a heart attack and was in hospital for two weeks. While he quickly recovered his strength and looked forward to getting back into his routine, he found when he returned home that he had lost his confidence. He was anxious about experiencing another heart attack while living alone and he did not like to keep calling his daughters to ask for their help.

When his daughter Alicja suggested he sell his house and use the money to build a granny flat in her backyard, he happily agreed, relieved that he would have someone nearby for the rest of his life.

Six years later, Alicja remarried and her new husband, having paid off Alicja's mortgage, wanted to rent out the granny flat to provide Airbnb income. Conrad was distraught but felt he had no choice—he did not want Alicja to be unhappy.

While he was frustrated that Alicja had gone back on her word, he did not want to fight with her, so he unhappily went to live with his other daughter, Louisa.

What type of things should a family agreement include?

> *"A family agreement should include everyone's contributions, what they expect in return, and what should happen if the agreement ends."*

A lawyer will be able to advise on the different options available to each party, but the following list gives an understanding of the range of things a family agreement could cover, and what a family should discuss.

The list presents some questions to prompt discussions about the details of the arrangements. It may not be necessary to incorporate every point into the formal agreement, but it is important to consider them before making a commitment.

The financial contribution

- What has each party contributed?
- Are the contributions a gift or a loan? If a loan, what are the payment terms?
- What is each party's ongoing commitment?

In many cases, the older person will contribute a lump sum payment. Some of this usually goes towards renovations, the construction of a self-contained unit or the deposit for a property. The rest is made as a contribution in return for future care.

This is an important part of the formal agreement because it shows that the older person is not simply making a cash gift to help out a family member, but is making a contribution beyond the immediate financial need with the expectation of receiving something in return.

> *" Most commonly, the older person may contribute a lump sum payment or deposit and not be named on the title, and the family member will be responsible for servicing the loan. Sometimes the older person will be named on the property title and if so, and if there is a mortgage attached to the property, they will be named on the home loan and responsible for its ongoing payments."*

Another arrangement might be that the older person discharges their family member's mortgage in return for the right to reside in the property.

It is always important to be clear about whether any contributions are expected to be repaid. If so, the payment terms should be clear, including what action will be taken if the terms are not met. The older person should consider the financial consequences for themselves if the family member, despite their best intentions, is not able to repay a loan.

Licence to occupy

- Does the older person have the right to reside in the property as long as they live?
- Are there any circumstances in which they would give up this right (such as remarrying or enter a relationship with a new partner)?
- What happens to this right if the property has to be sold?

Making a financial contribution and receiving a right to accommodation for life or a life interest in the family member's home ensures the arrangements meet the criteria for a granny flat interest. A granny flat interest makes this type of arrangement more common than that of the older person being a co-owner on the property title.

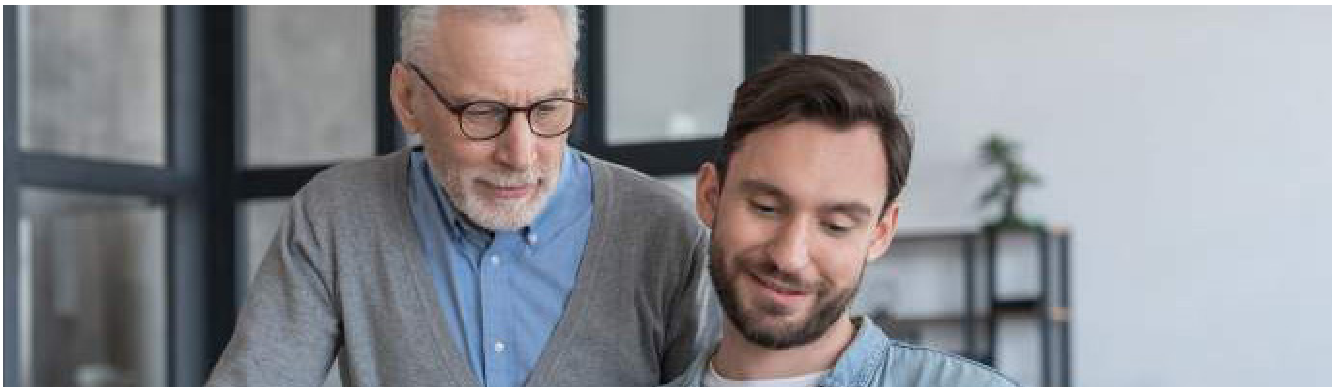
The granny flat interest means the Centrelink asset deprivation rules do not apply and the older person's age pension is not affected. The older person should always contact Centrelink prior to making a commitment to confirm this.

Voluntary ending of agreement

- What happens if the older person is hospitalised?
- What happens if the older person needs more care than can be provided at home and must move to residential aged care?
- What happens if the family member's circumstances change, such as their partner relationship ending?
- What happens if the arrangements simply do not work out and everyone amicably decides to end it?

While the arrangements may have been made with the intention of lasting for the rest of the older person's life, situations can arise where all involved may agree to end the agreement. These might include hospitalisation or increased care needs of the older person or a change in the family member's ability to provide care, such as needing to move interstate.

To provide for such instances, the agreement could include a clause in which the family agrees to make all efforts to find the older person alternative accommodation or care. Including clauses specific to the financial contributions may become important if the agreement ends earlier than anticipated and the older person would like to access money for residential aged care.



Involuntary ending of agreement

- What happens to each person's housing and financial situation if the property needs to be sold?
- How should disputes be resolved?
- What happens if the family member's partner relationship ends and they need to move out, or the property needs to be sold?
- What happens if either the older person or the family member dies?
- What happens if either party defaults on what was agreed—for example, by not providing the promised care?

Provision should be made for the agreement ending, regardless of whose fault it might be. It is very important that the older person considers whether they will be able to afford to support themselves if the arrangements end and whether they will be able to access the financial contribution that was intended to provide them with care until the end of their life.

If the family member's relationship ends and family law proceedings are involved to decide property settlement, the older person should seek legal advice about joining these proceedings to ensure their contribution is recognised.

> *"The formal agreement might state that dispute resolution or mediation services should be used if a conflict arises that might end the agreed arrangements. This provision can assist in giving shape to a resolution and engaging unwilling parties."*

Other family support

- Do other family members endorse the arrangements?
- Does the financial contribution affect the older person's will or estate?
- What happens if the agreement ends prematurely?

The older person should consider what their other family members will make of the loan or contribution and whether they are supportive of the care arrangements. This might also be included in a written family agreement as an endorsement from the other adult children.

> *"Having a whole-family discussion about future care arrangements might discourage unscrupulous behaviours, particularly amongst siblings who are in conflict. The decision of how to proceed ultimately lies with the older person and the family member they enter into the agreement with, but transparency in proceedings is likely to be beneficial to everyone, particularly in preventing conflict over inheritance."*

The older person should consider how the agreement will affect their will and estate. In particular, if the older person dies shortly into the arrangements, does their financial contribution remain with the family member, or should a proportion of it be redistributed as part of their estate?

The older person's care

- What care does the family member promise to provide? Will some care be provided by other members of the household (such as son- or daughter-in-law or grandchildren?)
- What happens if the older person's care needs increase?
- What happens when the family member cannot provide the promised care for a short or long-term period?

The older person may not need much care when the agreement is made, but it is important for everyone to be clear about what is expected of them now and in the future. It is helpful to put a value (daily or hourly) on the care provided so that as time passes, the family member 'earns out' the older person's contribution. This can help prevent disputes should the agreement end prematurely due to illness or death.

There should be discussion about how the older person's care might be provided in situations where the family member is unable to fulfil their promise—for example, if they became seriously ill and the older person needed to pay for external formal care.

Discussion about whether all members of the household are to assist with providing care as necessary will help ensure that there is no confusion about responsibilities or expectations in the future.

Care needs to consider include:

- **personal care.** Will the family members provide all care, or will the older person purchase some formal care?
- **meals, cleaning and laundry.** Will the older person take care of this for themselves until they are unable?
- **shopping.** If the family member is assisting with shopping, how will bills be paid and banking managed?
- **transport to appointments.** Will the older person have their own car or be reliant on others for transport?
- **arranging social or community services.** Will the family member assist with arranging services?

Case Study

Randa was getting older and did not want to live alone. She wanted to be close to her grandchildren and be able to see them often. After talking to her son, Hasan, and his wife, Zahra, she decided to sell her home and move in with them. Randa made a $500,000 contribution with the understanding that Hasan and Zahra would look after her until she died. Randa's younger son, Darius, was happy with this arrangement as he did not feel he was in a position to provide care for his mother.

Sadly, Randa suddenly became ill not long after the move and passed away soon after. Hasan and Zahra decided to pass on half of Randa's contribution to Hasan's brother, Darius, as they felt they had not provided care for long enough to justify keeping the money.

Child care

- Is the older person expected to provide child care or school pick-ups? How often?
- How much privacy will the older person have in the home, and will there be an expectation that the children can be left in their care whenever the older person is home?
- What happens when the older person is no longer able to provide care or the grandchildren no longer need it?

It may not be necessary to formalise the level of child care to be provided, but it is *very* important to have a conversation about it. If the older person is expected to be at home after school every day to supervise their grandchildren until the parents return, it will have an impact on their lifestyle and commitments.

When the older person is migrating from another country to live in Australia and help bring up their grandchildren, their ability to provide child care—and the need for the child care—is an integral part of the arrangements. Therefore, it is important to discuss what will happen if the older person is too ill or frail to provide care and when the children no longer need supervision.

Domestic tasks

- Who will be responsible for cleaning and maintaining the older person's spaces?
- Can the older person make decisions about, and changes to, the garden?
- Can the older person have a pet?

It may not be necessary to document all possible issues, but it's important to discuss them. Will any of the regular domestic tasks (cooking, cleaning and gardening) be shared? Will the older person be expected to look after the family pet when the family is away? In particular, the responsibilities of upkeep and renovation of the older person's space, which may become a point of conflict if the arrangements end early, should be documented.

Holidays, absences and respite

- What happens when the older person goes on extended holiday?
- What happens when the family member goes on holiday?

Holidays and absences might need to be discussed so that everyone's expectations are clear. For example, will the family be planning on holidaying together? In particular, the formal agreement should be document how the necessary care for the older person will be provided if the family is away for an extended period.

Additionally, the older person may not need much care and assistance at the beginning of the agreement, but it is likely that in years to come they will need more. Have provisions been made for somebody else to supply the necessary level of care or supervision when the family member is unable to do so?

Steps to take to arrange a family agreement

- Summary
- Understand what the older person wants and needs
- Discuss with family and friends
- Get legal and financial advice
- Future planning implications
- Wills and inheritance implications
- Have a formal family agreement drawn up by a lawyer

Summary

> *"For a family, setting up arrangements where an older person comes to live with one of their adult children or another family member is a big decision."*

Because there are so many positive aspects to these family arrangements, it can be challenging to contemplate the potential downsides. But it is important to consider whether this is the best option for all involved and—if it is—to formalise it with a written document.

Sometimes families can be averse to formalising agreements, as they all get along well and see it as unnecessary and suggestive of dysfunction. If family members are disinclined to formalise the agreement, it can help if the older person suggests that it is necessary in order for them to meet their Centrelink or tax requirements.

Anyone considering entering into a family agreement should consider the following steps.

1. **Understand what the older person wants and needs**

   This means doing some research about all the options and seeking any extra information that might help. It also means considering whether the person is being pressured to enter the agreement and how much of the decision-making is being driven by financial considerations—of the older person or others.

2. **Discuss with family and friends**

   It is important to have proper discussions with the people who will be involved in the agreement, as well as other family members who might feel they have been overlooked. It can also be useful to discuss the idea with friends or other people that the arrangements won't directly affect, to get their views and advice.

3. **Get legal and financial advice**

   Everyone involved in the agreement should get independent legal and financial advice about the implications now and in the future. A family agreement will have implications for retirement income, age pension, aged care asset tests, tax and borrowing power.

4. **Have a formal family agreement drawn up by a lawyer**

   Many family agreements will proceed happily, but sometimes an unexpected situation arises and the arrangements need to end. A formalised, written agreement gives a starting point for negotiating the separation. It will help safeguard the older person's assets and set them up for the future. Most importantly, it can help avoid unnecessary estrangement and conflict, as the terms will be clear from the beginning.

Understand what the older person wants and needs

For the older person, a family living arrangement may be the first step in coming to accept more help from others as they age and getting used to not being as independent as they have been in the past. The proposed arrangements may relieve the older person of their stress about moving to a residential aged care facility. It may also present an opportunity to help out younger generations of the family with a financial contribution that can make a real difference when they most need it.

> *"One of the major reasons an older person might consider moving in with a family member is so that they don't have to live alone."*

While many people are happy to live alone, some find their mental wellbeing is much better if they have family or friends nearby. As well as the practical help with day-to-day tasks and less anxiety about things going wrong, living together means more social opportunities, time with grandchildren and incidental conversation.

Do the research and seek further information

In order to make a good decision, the older person should take their time to think carefully about what they want (now and in the future) so they can be confident that the proposed arrangements are the best way of achieving that.

This might include researching the different options that are available and understanding the resources, services and costs for aged care in the local area.

If you are an older person considering entering into living arrangements with your family, these are some questions you might consider:

- **What do you hope for from the arrangements?** Will they solve all your difficulties or only some?
- **What care will be provided as part of the arrangements, and by whom?** Is it just a place to live that is being offered, or will someone help with your daily needs?
- **What might you need to give up to make these arrangements work** (independence, time alone, financial security, etc)? Are you ready to let these things go?
- **What might you gain from these arrangements** (company, closer relationships, less worry about the future)?
- **Is there anything about the proposed arrangements that worries you?**
- **Are there any other options you should explore before entering into the arrangements with your family?** These might include community aged care services to help you live independently at home, or a different style of supported residential or retirement living.
- **Have you considered what might happen if the arrangements don't work out?** It can be costly, lengthy and stressful to have to resolve a dispute through the courts or tribunals, and it may not always be resolved in your favour.
- **Are there any points of conflict or areas of disagreement now with this family member?** If, for example, you don't approve of your family member's lifestyle or get along with their partner or others in the household, consider whether living together is the best option.

Pressure to enter into family arrangements

Sometimes an older person might be pressured to enter into arrangements with family that they are not comfortable with. The pressure might come from over-protective family members who think it is the best option, or it might come from family members who are trying to take advantage of the older person.

> *"To ensure the older person is not being pushed into arrangements against their will, they should voice any concerns and seek legal and financial advice to add weight to these concerns."*

There are elder abuse and older person's advocacy phone lines in each state and territory that can offer information and advice.

Some questions for the older person to consider include:

- If you're being pressured by someone to make decisions, think carefully about what this person's interests are. Do they want the best for you?
- Do you have other options available? A family agreement might not be the appropriate decision for you.
- Are you trying to please someone? Are you trying to make up for something in the past?
- Is the person who is applying the pressure in any financial trouble?

Financial considerations

People will have multiple reasons to enter into family arrangements, often about care as they age and not wanting to be isolated. The financial contribution is also an important element, and the older person should think carefully about how finances might be driving their, or others', decision-making.

> *"If a family member needs financial assistance, it is worth exploring other options that may leave the older person less exposed if something goes wrong."*

It is important for the older person do some research on the financial implications of any agreement and the alternative options available. This may include contacting Centrelink, My Aged Care and the Australian Tax Office, because any large financial transaction can affect a person's tax, age pension or other government benefits.

Some questions for the older person to consider include:

- Are you making this decision to avoid the financial cost of aged care?
- Are you trying to minimise your assets in preparation for aged care or the age pension? The rules around assets for the age pension and aged care can be complex and can change. You can find up-to-date information for aged care at My Aged Care (www.myagedcare.gov.au) and for the age pension at Services Australia (www.servicesaustralia.gov.au).
- Are you entering into this agreement in order to keep assets in the family? If you need to clarify tax implications, contact the Australian Tax Office (www.ato.gov.au).
- Are you entering into this agreement primarily to help out a family member financially (and not because of your own care concerns)? Are there other ways you can offer assistance that do not expose you to risk?

Discuss with family and friends

When the older person has an understanding of what they want from the agreement, the next step is to discuss it with family and friends. This includes the family members the arrangements will be made with, as well as others. It can also be good to talk over the proposed arrangements with people who have no involvement, just to get their perspective.

> *"If the family agreement will affect the older person's estate and what their children will inherit, it is a good idea to discuss this with everyone who will be affected."*

An older person is under no obligation to leave an inheritance, but many wish to pass on wealth to their family when they can. Sometimes sibling conflict or expectations can affect people's decision-making, and it is better for these things to be discussed openly before any arrangements are formed, in order to prevent later conflict.

Discussing potential arrangements with friends and family:

- makes sure everyone is on the same page and understands what they are offering and getting in return
- helps prevent later conflict with a family member who feels annoyed because they were not involved or were overlooked or ignored
- acts as a safeguard against the older person being taken advantage of by a family member acting in secret
- helps bring to light other options or issues that neither party had thought of.

Family conflict

Getting older can be confronting and many of us don't like to think about it or talk about it. In particular, many families find it challenging to discuss the way a parent getting older can change family dynamics or how it might mean family members need to take on new roles. It can be a very emotional discussion, and sometimes long-held resentments, regrets or other feelings can make it difficult to feel heard and supported.

> *"Families can sometimes experience conflict, particularly when people have different ideas about the ways each other should live. This can make it even more difficult to have a productive conversation."*

One option is to have an independent person be involved with the discussion. This could be a family friend or a professional mediator who can help move the conversation along and keep the discussion on track. The assistance of a professional can be particularly helpful if the older person feels their point of view won't be properly heard or if family members are particularly over-protective or have strong opinions.

Having conversations with family members

The older person and the family member who will be living together should discuss all aspects of the arrangements.

Usually, the family member will be an adult child of the older person. In this case, the adult child's partner and children should also be included in discussions, as they will be sharing the property and potentially providing care to the older person. They may need to be named in the formal agreement as well.

The following conversation starters might help get the ball rolling.

- In order to keep getting the age pension, I might need to get the agreement in writing. Is that going to be okay?
- If I need help every day, will you be able to, considering how busy your job is?
- Shall we eat together every night? Or just a few times a week?
- Will you be able to help me with cleaning and cooking?
- Will you be able to help me with showering and personal care or should I arrange community aged care services?
- What happens if you or I become seriously unwell?
- Can I get a cat?
- Would you like me to pick up the children every day? Will it be okay if I only do it a few times a week?
- Am I able to work in the garden and decide what I'd like to grow?
- Will it be okay for me to have visitors?
- Will I go on holidays with you, or will someone be able to stay behind with me?

Get legal and financial advice

The most typical family agreement involves the older person making a financial contribution and receiving the promise of accommodation and care, where necessary. Because the implications for each party involved will be different, both the older person and the other parties should seek independent advice.

> *"This means that if the family member has property or loan documents drawn up, the older person should have them reviewed by their own lawyer or financial adviser."*

Making a financial contribution towards property to live in, gifting or loaning money, or using a property as security for someone else's loan can all affect a person's long-term finances. Not only might the older person no longer have ready access to cash, but they may also become responsible for someone else's mortgage repayments. There is also the possibility that if the arrangements do not work out, they will have no money for future accommodation.

Other arrangements with family might have long-term implications as well. Contributory Parent visas that allow older people to migrate to Australia can be costly and use money that is needed for retirement. Adult children who return home and don't contribute to the household or wish to leave can affect a person's daily living expenses.

Age pension implications

Older people can receive the age pension through Centrelink, with the amount received being dependent on the person's income and assets. Assets can include real estate, personal belongings, financial investments, superannuation, private trusts, shares and a variety of other things.

https://www.servicesaustralia.gov.au/individuals/services/centrelink/age-pension/who-can-get-it/assets-test/asset-types

A person's own home is not included as an asset for the purposes of calculating the age pension. If the person has transferred assets or money to live in a property that some someone else owns, the granny flat interest will apply.

https://www.servicesaustralia.gov.au/individuals/topics/granny-flat-interest/27756

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.

https://www.servicesaustralia.gov.au/individuals/services/centrelink/age-pension/who-can-get-it/assets-test/asset-types/gifting

A person's eligibility for the age pension is continually reassessed. Any major change to a person's income or assets can affect the ongoing rate at which their pension is granted.

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

Financial Information Service

Services Australia/Centrelink runs the free Financial Information Service, which can assist people with better understanding their financial affairs, including financial implications for government benefits.

https://www.servicesaustralia.gov.au/individuals/services/financial-information-service

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.

This service can help with understanding the implications of any family agreement or gifting on any government benefits, as well as aged care costs.

Tax implications

Making a large financial contribution or disposing of property can have implications for an older person's tax. The family member entering into the agreement with the older person may also face tax implications.

> *"In general, a gift of money within a family does not become assessable income. However, different rules apply to property."*

A recent change to legislation means 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 arrangements within their family informal and undocumented as a way of avoiding capital gains tax.

Any person entering a family agreement is strongly encouraged to get independent financial advice about the tax implications.

Information is available on the Australian Taxation Office website (https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/Granny-flat-arrangements-and-CGT/) or search for answers from other people on the ATO Community site (https://community.ato.gov.au/).

Aged care implications

As a person ages, they may need more assistance with daily tasks. This can include community aged care services provided in the home or higher needs nursing assistance provided in residential aged care. While the Australian Government pays for some aged care, the care recipient will be required to contribute some of the cost, depending on their income and assets. How much a person must contribute is decided by a means and assets test.

Financial hardship assistance to pay for aged care is available for those who need it. However, a person who has gifted more than $30,000 in the previous 5 years may not be eligible for this assistance, even if they have no other income or assets.

Some people may prefer to contribute their assets or wealth to family members rather than keep it to pay for their own aged care. However, it is important to research whether a person will be able to access their preferred type and location of care if they have no money remaining to pay the costs.

Making a financial contribution to a family member or disposing of property can affect what is considered to be a person's assets. The Services Australia/Centrelink Financial Information Service can assist in understanding aged care costs.

Information about aged care costs is available on My Aged Care (https://www.myagedcare.gov.au/understanding-costs).

Future planning implications

When making accommodation and care arrangements and planning for the future, an older person might like to consider putting in place documentation to assist with financial, medical or personal decision-making in the event they no longer have the capacity to make their own decisions.

Each state and territory has legislation and documentation so that a person can appoint someone else to make decisions on their behalf. While having discussions about the future, it can also be a good time to discuss with family members about future medical and financial decisions.

Wills and inheritance implications

Making arrangements with one family member will usually have implications for others. If an older person contributes most of the proceeds of their house to one adult child in return for care, they will have a smaller estate to be distributed to their other children.

If the older person dies shortly into the arrangements, does their financial contribution remain with the family member, or should a proportion of it be redistributed as part of their estate?

> *"A person is under no obligation to leave an inheritance. However, the implications of any family agreement on a person's will and estate should be considered and discussed with the family and with a lawyer."*

Have a formal family agreement drawn up by a lawyer

The primary reason for formalising a family agreement is so the older person can protect their interests and have options if things go wrong.

A key issue for family arrangements is that the older person is usually giving up their property, or their rights as owner of the property, and exchanging that for the right to live in a new property and/or to be cared for. However, these new rights are not registered on the new property title. Often, they are not stated anywhere. This means that the older person can be at a disadvantage if the agreement does not work out.

Whether the arrangements were documented in writing, and whether the older person was on the title of any property involved, will affect what options are available when it comes to resolving any disputes or dissolving the agreement. It is difficult for the older person to prove any interest in the property without any written documentation of the arrangements.

When two businesses enter an agreement, they draw up a contract to ensure everyone is clear about what is being asked of each party and what will happen if either of the parties does not fulfil their promise. If necessary, the courts can make a ruling based on what was in the contract.

Families, however, tend to do things more casually, and the law (or lack thereof) reflects this. Because arrangements within a family are not presumed to be legally binding—unless there is written documentation to dispute this —it is difficult for the legal system to bring a resolution.

> *"If the older person later wants to enforce their contractual rights, they have to show that both parties intended the arrangements to be legally binding when they entered into them. This can be very difficult to do if the agreement is informal and verbal."*

In addition, when the arrangements are between a parent and child, the law will start with the presumption that the older person's contribution (as property or assets) was a gift, because the child stands to inherit the older person's property eventually. Because of this, the older person can have an uphill battle to prove that their payment was a contribution to buy them rights to the property, not a gift to their child.

Even when the arrangements are documented, resolving a dispute and recouping a financial contribution can be fraught. For example, even when there is a record of a financial transaction, it can still be difficult to prove a person's intention when making the contribution. Was it a loan, gift or contribution in return for care? In most states and territories, if the issues cannot be resolved it will be necessary to apply to court. This can be expensive, lengthy and stressful.

> *"It is therefore best to enter into the arrangements with a formal agreement that states what will happen if they end."*

Case Study

Gerald is happy living alone but is worried about what the future holds. He has two sons but only gets on well with one of them, Harry, who is always over giving him a hand. His other son, Bill, has not spoken to him in years, and Gerald has no intention of leaving him any inheritance. When Harry suggests Gerald transfers ownership of his house into Gerald's name so there is no confusion after his death, Gerald agrees and goes along to see Harry's lawyers.

Gerald finds an independent lawyer and asks Harry to wait outside so he can speak with her alone. She asks him many questions to make sure he understands the potential consequences of his decision. She tells him to consider what will happen in the future if his relationship with Harry breaks down, if Harry predeceases him, or if Bill or any of Bill's children come back into his life.

Gerald decides not to make any changes at this time but to draw up a new will to give his home to Harry when he dies, and to make some provision for Bill. Both Gerald and Harry are happy with this arrangement, particularly as Gerald's lawyer provided more information about capital gains tax and inherited assets.

When things go wrong

- Summary
- Options available to resolve a family agreement breakdown
- Things an older person can do

Summary

> *"A family agreement that involves shared living arrangements or financial contributions for care usually comes about because everyone involved is confident it will work out. Unfortunately, sometimes it does not—and then the older person needs to look at what options are available to resolve the dispute and, often, find a new place to live."*

It does not always matter whose fault it is that the agreement has not worked out—it may not even be anybody's fault. The challenge is that it is usually the older person who is left in the more precarious position—they have often given up their own home, and a significant amount of their assets, for the promise of ongoing accommodation and care. They also have fewer options for mitigating their losses, as they are usually no longer working (so may have a low or limited income) and may have other age-related difficulties that limit their independence.

> *"If the family member is unwilling or unable to return the financial contribution, the older person may be at risk of homelessness. Even if the older person is able to recoup some of the money they put into the arrangements made with their family, it may not be enough to set them up in a new life."*

The main options for resolving a family agreement breakdown are:

- direct discussion, to see if a resolution can be found
- alternative dispute resolution, or
- civil litigation.

Options available to resolve a family agreement breakdown

There are some options available for resolving a dispute over family living arrangements. But all parties should be aware before they enter into the arrangements that these options can be lengthy, costly and stressful. The result does not always work out in the older person's favour, and even when it does, the amount recouped may not be sufficient for the older person's needs, particularly when the property market in Australia is highly competitive.

Because there is no distinct legislation or decision-making body to mediate family agreements, a combination of different areas of law applies. In most states and territories, this might mean making an application to the courts (in Victoria, to the Victorian Civil and Administrative Tribunal). A legal service or lawyer will be able to advise on the best course of action.

Coming to a new agreement through discussion

In some situations, it may be possible for the parties to the family agreement to change or end the arrangements in a way that is satisfactory to everyone. This is more likely when the agreement has ended due to external factors—for example, the older person might now need more care than can be provided, or the family member who owns the property may go through a relationship separation and need to sell the property.

> *"A good, written family agreement drafted by a lawyer will have considered the possibility of the arrangements ending and should offer guidance for what each person should walk away with. Even when there is no agreement in place, if everyone is willing to discuss and negotiate, it may be possible to resolve the issue without needing a more formal process."*

But where the relationship between the two parties has broken down; where there is conflict, family violence, threats or fear; or where one party refuses to engage, it may be necessary to look at more formal options for resolution.

Alternative dispute resolution

Alternative dispute resolution (often called 'ADR') offers another way of settling disputes other than traditional court proceedings. It is less expensive than going to court and usually provides a quicker resolution. Alternative dispute resolution may also help preserve the relationship between the older person and their family member, particularly as the outcome is one agreed to rather than forced upon the parties by the courts.

There are various forms of alternative dispute resolution, including negotiation, mediation and court- or tribunal-directed dispute resolution. All forms are facilitated by an independent or neutral professional who leads the discussion and tries to move it towards a resolution.

Negotiation

This is a process in which the older person and their family member have discussions (in person or through their lawyers) to try and reach a settlement. While there will be costs for the lawyers and possible administrative fees, this is a much cheaper option than court proceedings.

Mediation

This refers to a meeting that offers an opportunity for the parties to listen to and be heard by each other, discuss what is important to each person, and reach an agreement that is satisfactory to everyone. The mediator is an independent professional who helps the parties but does not make a decision for them or tell them what to agree to.

As well as court- or tribunal-appointed mediation services, there are also family mediation services with experience in resolving family conflict, including intergenerational conflict. Mediation is not suitable if the parties are estranged, are unwilling to engage or do not feel safe.

Court- or tribunal-directed alternative dispute resolution

In most instances, parties who have applied to have a court or tribunal hearing are directed to first try and resolve the matter before it proceeds to court. Each state and territory has different requirements and options, but it is common for courts and tribunals to insist that parties attempt some form of mediation or alternative dispute resolution as a first step.

Dispute resolution that is required by the court or tribunal may be focused on coming to a settlement regarding the property and financial contributions and avoiding a hearing. It aims to resolve the matter at hand and is not a forum for personal family grievances or solving problem behaviour. There will often be some costs involved, but it will be vastly cheaper than a court process.

Legal options

The main redress for family agreements that have gone wrong is through civil litigation: seeking an order through the courts or, in Victoria, a tribunal. Unfortunately, this can be very costly, take a long time, have outcomes that are unsatisfactory, and be very stressful. Because of this, litigation can exacerbate family breakdowns and may lead to a loss of family relationships. But in some instances, it is the only way to move forward.

There are different avenues of legal redress that the older person can use to attempt to recoup the financial contribution they have made or assert an interest in the property. Each comes with some complexity and will depend on the context of the individual agreement. Options available will be different depending on what the agreement encompassed (property, loans, financial contributions) and whether there was written documentation of what was agreed.

Most people who wish to seek legal redress may need to be prepared to pay the costs. In some circumstances the older person may qualify for publicly funded legal assistance from Legal Aid.

Family agreements involving property

If the older person is named on the property title, any legal negotiations will stem from the clear understanding that the older person has a legal interest in the property. Depending on the contributions and initial agreement, lawyers for the two parties may be able to negotiate a settlement that takes into consideration the amount or proportion that the older person contributed.

Most commonly in family agreements, the older person has no legal title, so they will need to look at ways of asserting their claim over the property. This might mean showing they have an equitable interest, where they have made a financial contribution and fairness dictates they have an interest in the property. As well as showing that the contribution was not a gift, the older person will also be required to prove that there was an intention by both parties to be legally bound by the agreement.

There are various equitable actions or remedies that may be used to assert the older person's interest. It might be established that the family member and the older person had formed a common intention on how the property will be shared, and that because of this, even if the older person is not on title, they are deemed to have an interest in the property.

EQUITABLE ESTOPPEL

Estoppel is a way for the courts to prevent a person going back on their word. In relation to family agreements, it can be used to compensate the older person for the loss associated with the breakdown in the agreement.

For this remedy the older person must show that the family member gave them the impression that they would gain an interest in the property—for example, that they would be able to live there for the rest of their life—and that this impression led the older person to make a financial contribution.

If these arrangements break down and the older person can no longer assert their interest by living in the property, the situation is to their detriment. An equitable estoppel action can compensate, essentially by stopping the family member from claiming that the financial contribution of the older person was simply a gift and unrelated to future promises of care.

PRESUMPTION OF ADVANCEMENT

One of the added difficulties is the legal principle known as the 'presumption of advancement', which presumes that any financial contribution made by a parent to their child is to be seen as a gift (and not affording them a legal or equitable interest) unless it can be proven otherwise.

This principle can operate for any transaction made from the older person to their child, where it is assumed the transaction was a gift unless the older person can prove otherwise. A promise of care, particularly a verbal promise, is often not enough to rebut this presumption.

UNCONSCIONABLE CONDUCT OR UNDUE INFLUENCE

An older person can try to recover property or assets by asserting unconscionable conduct (where the family member has set out to deceive or take advantage of the older person and not provided their part of the agreement) or undue influence (where the older person has been pressured into the agreement, has not benefited from it, and was dependent on the family member when the agreement was made).

However, both these options only apply in very specific circumstances and not when the older person has freely entered the agreement and later become disenchanted.

CAVEAT

A caveat is a legal document that claims an interest in a property. When one is lodged it notifies the title owner, and any potential purchasers or financial institutions, that someone who is not listed on the title is claiming an interest in the property. For example, if an older person made a financial contribution to the purchase or renovation of a property with their adult child but was not on title, their lawyer could lodge a caveat to assert their interest. The caveat would remain in place until the matter is resolved and the older person withdraws it.

A caveat can encourage the family member to resolve the issue, because they will not be able to refinance or sell their property until the caveat is withdrawn.

Loans

Sometimes, although the family arrangements do not involve property, a disagreement may still arise, about whether a financial contribution was a gift or a loan or if a family member stops making repayments on the loan.

Money owing on loans can be pursued through the courts, or lawyers working on behalf of the respective parties may be able to negotiate a payment plan. However, in some situations the family member may be bankrupt and not able to repay the loan.

It is always advisable for older people to seek financial advice before making a loan to a family member and to consider whether they will be in a good financial position if the loan is not repaid.

Family law proceedings

Where a family agreement is between an older person, their child and their child's partner, and that couple separate, there may be family law proceedings for the couple to solve a property dispute. The older person can protect their interest in the property by joining the family law proceedings.

Things an older person can do

Call an elder abuse or advocacy helpline to discuss your situation

Everyone's situation is different and complex. For this reason, it is important to get information and advice that is specific to the individual situation.

> *"For older people who are part of a family agreement that has ended or is likely to end, a good way to start to understand their options is to call an elder abuse or older person's advocacy helpline."*

The helpline will be staffed by people familiar with family agreements and family conflict. They can give advice about what to do if the person feels unsafe in their home, family members are refusing to move out, or the person needs to find alternative accommodation.

1800 ELDERHelp (https://1800respect.org.au or 1800 353 374)

Think about what the older person wants or needs

> *"When an older person enters into a family agreement, they usually assume it will last forever."*

They may not have given much thought to alternative living and care arrangements. But if things have not worked out, they may need to consider some alternatives.

Recouping their financial contributions may not be possible, or doing so might put the family in a precarious position. Once they take steps to resolve the dispute, they will need to be able to give instructions to a lawyer or put forward their views in a mediation conference.

After receiving information about their situation, the older person should take some time to think about the outcomes they would like and what other steps they may need to take. This might include seeing a financial counsellor to understand their financial situation or looking at aged care options if some assistance with daily tasks is needed.

Get advice from a lawyer

Almost all options to resolve the dispute will be based in civil litigation and it will be necessary for the older person to find a lawyer to inform them of the options and act on their behalf. If the person doesn't have a lawyer, there are various ways of finding one.

Elder abuse helpline

Call 1800 ELDERHelp (1800 353 374) to be put through to the elder abuse helpline in the relevant state or territory. The helpline will be able advise where to get legal advice.

Legal advice helpline

Legal Aid in each state or territory runs a legal advice helpline. This helpline will be able to offer advice and direction on next steps. They may advise the caller that they need to find a private lawyer, that they should contact a community legal centre, or that they may be eligible for legal aid.

Legal Aid

In some instances, the relevant state or territory Legal Aid service may be able to pay for a lawyer to help. This is called 'providing a grant of legal assistance'.

Generally, public funding for legal assistance is limited to family law (that is, matters that come under the *Family Law Act 1975*, such as separation and custody arrangements) and criminal law. This means that family agreements and property disputes do not generally fall into the types of legal matter for which there is public funding. However, sometimes where there are particular vulnerabilities, circumstances or family violence (including elder abuse) or where the property is a primary place of residence (as opposed to an investment), public funding may be available.

As funding is limited and demand for legal services is high, there are strict eligibility criteria, including a merit test (regarding the type of legal problem the person has) and a means test (regarding their ability to fund their own lawyer).

People who own, or have significant equity in, their home may not be able to access publicly funded legal aid because of the assets component of the means test and the high demand on these services. There is some discretion available to relax this test for older people whose assets are in the property which is being disputed and where elder abuse has been experienced.

To find out if their legal problem qualifies, the person will need to contact the Legal Aid service in their state.

- ACT: Older Persons ACT Legal Service, Legal Aid ACT
  legalaidact.org.au
- South Australia: Legal Services Commission of South Australia
  lsc.sa.gov.au
- NSW: Legal Aid NSW
  legalaid.nsw.gov.au
- NT: Northern Territory Legal Aid Commission
  legalaid.nt.gov.au
- Queensland: Legal Aid Queensland
  legalaid.qld.gov.au/Home
- Tasmania: Tasmania Legal Aid
  legalaid.tas.gov.au
- Victoria: Victoria Legal Aid
  legalaid.vic.gov.au
- WA: Legal Aid WA
  legalaid.wa.gov.au

Community legal centre

A community legal centre is an organisation that provides free legal services to the public and advocates for public and social policy change. Community legal centres are able to help people who cannot afford a private lawyer and are ineligible for legal aid. They focus on helping people who are experiencing economic and social disadvantage that places them in a vulnerable position.

Private lawyer

The website of each state's Law Society or Bar Association can help people find a lawyer in the local area.

List of societies and associations here:
https://www.lawcouncil.asn.au/about-us/our-constituent-bodies-and-directors

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

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 and will not affect the older person's pension rate. However, this needs to be a genuine loan and Centrelink will require proper documentation and evidence, as a verbal agreement is not enough.

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.

References

Australian Government, Australian Taxation Office

https://www.ato.gov.au/General/New-legislation/In-detail/Direct-taxes/Income-tax-on-capital-gains/Supporting-older-Australians---exempting-granny-flat-arrangements-from-capital-gains-tax/

Treasury Laws Amendment legislation

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6720

Intergenerational households

- Grandparents and child care
- Sharing a home with adult children

compass GUIDING ACTION ON ELDER ABUSE an EAAA project

Grandparents and child care

> *"One of the roles many grandparents take on during their retirement is child care for their grandchildren. For some, this might mean an afternoon each week or the occasional school pick-up. For others, it might mean full days of care to enable the parents to work."*

It's estimated that a quarter of all Australian grandparents provide care to their grandchildren on a regular basis, at an average of 12 hours per week. (https://nationalseniors.com.au/research/health-and-aged-care/australian-grandparents-care)

For many grandparents, the opportunity to spend substantial time with their grandchildren is a positive one, but it can also come with some pressures and challenges. This is exacerbated when the older person lives in the same house as their grandchildren, as any conflict might mean not only strained relationships but also difficulties with living arrangements or their financial security. In some instances, the older person might find that their contribution to the household is valued when the children are young and need more care, but that this changes as the children grow up or the older person's increasing age-related health needs mean they are not as able to provide care for the children.

Like other family arrangements, the care of grandchildren can benefit from frank and open discussions between the grandparents and parents about expectations, time commitments and costs. It may also help to document and review these discussions regularly to make sure that everyone continues to be happy with the arrangements.

Causes of conflict

While most families will find the arrangements positive for all, there are some areas of conflict that can leave people dissatisfied or hurt. In some situations, this conflict can lead to a breakdown in the family relationship and the grandparent may be refused contact with their grandchild.

Feeling pressured to take on too much

An older person may offer to care for their grandchildren thinking it will be an occasional situation, only to find they are looking after the kids regularly or multiple times a week. This may limit their own activities and be exhausting. It can also mean the older person might feel pressured not to go on holidays, take on work or continue volunteering because they're expected to look after the grandchildren.

Being expected to pay for costs

Some grandparents take care of children during school holidays and might be expected to take them to different activities or provide entertainment and meals. This raises the question of who is to pay for these. When the grandparent feels pressured into spending they can't afford, or that their generosity is taken for granted, conflict can arise.

Being disrespected and different parenting styles

Grandparents might find that their grandchildren don't treat them as they expect to be treated and might be disappointed if the parents don't discipline their children or step in to sort this out.

Grandparents might also disagree with the parents' way of bringing up their children. This can cause conflict, particularly if the parent feels they are being undermined by a grandparent.

Things to discuss

Before taking on care of grandchildren, there are some issues that might be helpful to consider and discuss with the parents.

- How often would you like to care for your grandchildren? Would you prefer it to be occasional (as needed) or on a regular basis? Will you feel comfortable saying no if you have other plans? Do the parents understand that there may be times you'll be away or unavailable?
- Will the children come to you, or will you go to them? Are you happy with the driving or public transport this will involve?
- If the children are at your house, will the parents supply toys, nappies, food and snacks? You may want to discuss a petty cash or reimbursement system for incidental costs.
- The parents might have rules and discipline strategies different to the way you brought up your children. Are you willing to follow the parents' instruction on how to manage their children's behaviour? Are you able to have a discussion with the parents about your own expectations of how you would like to be treated?
- If your living arrangements are linked to caring for your grandchildren, make sure you consider what might happen if you can no longer provide the care or when the children grow up and don't need it. Will you still be welcome to live in the home, and will you be happy to do so if the children aren't around?
- Consider your other children and grandchildren. Would you like to be able to offer child care to them, too? Think about how to make sure you're not stretched too thin and that there are no resentments among your children.

Resources

Grandparents looking after grandchildren

https://raisingchildren.net.au/grown-ups/grandparents/family-relationships/looking-after-grandchildren

Raising Children: The Australian Parenting Website has a great resource page for grandparents, with lots of tips on how to discuss and agree on child care arrangements. Would be worth linking to this page.

Support for grandparent carers

https://www.servicesaustralia.gov.au/individuals/services/centrelink/family-tax-benefit/what-other-help-available/support-grandparent-carers

Services Australia have a Grandparent Adviser service to inform grandparent carers about payments and services that can help those who provide ongoing care for children (that is, more than babysitting or school pick-ups).

The Grandparent Adviser Line phone number is 1800 245 965.

Are you a grandparent? Your legal questions answered

https://www.legalaid.nsw.gov.au/publications/factsheets-and-resources/are-you-a-grandparent-your-legal-questions-answered

This resource has information for grandparents either as carers or just when concerned about their grandchildren. The site explains family law, parenting plans and consent orders, and what is meant by 'the child's best interests'.

While it has no information about providing child care for grandchildren, it has a lot about some of the more complex legal questions around grandparents as long-term carers or with concerns about their grandchild's safety.

2018. Only available in English.

Grandparenting—Legal issues affecting older people

https://fls.org.au/law-handbook/health-wills-and-other-legal-issues-affecting-older-people/legal-issues-affecting-older-people/grandparenting/

This section of Fitzroy Legal Service's The law handbook gives an overview of the legal rights of grandparents and what people can do if they are denied time with their grandchildren.

Sharing a home with adult children

Many intergenerational households come about as a cultural norm or a way of providing care for ageing parents or grandchildren. But increasingly common is the intergenerational household that occurs because an adult child returns to the family home (or, in some cases, has never left).

Many parents are happy to support their adult children by offering them a place to live during their young adulthood as they study or save for their own property. There are indications that the COVID-19 pandemic led to an increase in adult children returning to live with their parents: an Australian Institute of Family Studies survey in July 2020 showed 21% of 50- to 59-year-olds had children living back at home (https://aifs.gov.au/publications/families-australia-survey-life-during-covid-19), while the same trend was seen in the United States (https://www.theatlantic.com/family/archive/2020/07/pandemic-young-adults-living-with-parents/613723/).

> *"The pandemic has had a lasting impact on employment and housing affordability, while closed borders put an end to overseas travel and encouraged people to return to Australia. All of this means adult children are more likely to be experiencing financial or housing stress, and their parents may be in a position to help."*

While many adult children might return home for a short visit without incident, family conflict and even elder abuse can occur, particularly if the adult child is experiencing problems that affect their behaviour, such as substance abuse, or untreated mental health issues. It is likely the adult child has returned home because of a problem or trauma in their life, indicating that they may be having a difficult time. If the adult child is unable to access the supports they need or make decisions to work towards recovery, the parent can find themselves in a challenging situation.

Sometimes an adult child will return home and bring their own children. This can be challenging for the older person, particularly if they're worried about their grandchildren's safety and what other options might be available.

> *"Like all family situations that involve shared living or financial arrangements, having an adult child return home can benefit from a frank and open discussion of what is expected from each person."*

It is not unreasonable for the older person to want their adult children to leave their home in time, particularly if they're being abusive or disrespectful. It is also not unreasonable to expect a financial contribution from the live-in child and to put a time limit on the arrangement.

Reasons an adult child might move home

It might be that the adult child is returning to study, or saving to buy a property, and the parent has offered a place to stay as a way of saving money. But most other reasons an adult child could have for moving home again will stem from an issue or difficulty they have faced, which might translate into challenging behaviours.

Unemployment or financial difficulties

The adult child might have lost their job or been unable to service a loan. While they might only need to stay a short time until they're back on their feet, the older person should consider what other support (other than housing) the child might need or expect and what efforts the child is likely to make to remedy the situation.

Substance abuse

The adult child might be dealing with addiction issues that translate into problematic behaviour.

Gambling issues

This may affect the adult child's behaviour and financial situation, leading to conflict. In some cases it might lead to the adult child taking financial advantage of the older person or stealing from them.

Mental health issues

While many people can manage their mental health well and seek treatment and support where needed, for some this proves very difficult. It may be the reason an adult child returns home, and it may affect their behaviour or require much care and support from the parent.

Relationship breakdown or family violence

Sometimes an adult child will return to the family home when their relationship ends or they have fled a violent partner. In some instances they might have perpetrated violence against their partner and be required by an intervention order to leave their own home.

How a family agreement can help

> *"If the ground rules and expectations are communicated from the beginning of the arrangements, it's less likely there will be misunderstandings or conflict down the track."*

A family agreement might include:

- how long the family member will stay
- how the family member will contribute to the household expenses
- whether the family member can have other people stay (such as a partner, friends or children)
- whether there are parts of the property that are private
- who will be responsible for household tasks, including meals, cleaning and shopping
- whether drinking or smoking is allowed within the home
- whether drug use or other particular behaviours will be tolerated
- how much notice will be given if the family member is required to leave, for example, if they break the rules.

Can an adult child be made to leave?

The older person has the right to choose who lives with them in their home and to have a safe and conflict-free environment. If an adult child has returned home (or has never left) and the arrangement is not working well, the older person may decide it is time for their child to leave.

> *"If the adult child refuses to go, there is no easy way of making it happen. A community legal centre or elder abuse service will be able to give advice. This may include the option of drafting a letter, or conversation points, asking the child to leave."*

Family mediation or dispute resolution may be appropriate if the adult child is willing to engage and the older person is willing to negotiate. It might be that they decide the adult child can stay for a short period while they make other arrangements, or that some agreed boundaries are put in place, with the understanding that the adult child will need to leave if they breach this agreement.

If the adult child becomes abusive towards their parent, it may be necessary for the older person to take out an intervention or apprehended violence order that may exclude the adult child from the home. Police would then be able to enforce this order if the child does not leave voluntarily. Elder abuse or family violence services can assist with advice on this, and if the older person is in danger they should contact the police.

Support for the older person and support for the adult child

If the adult child has returned home in response to a traumatic or difficult situation in their own life, they may need external supports beyond what a parent can provide.

Different supports are available in each state and territory to support people experiencing mental illness, drug and alcohol abuse or gambling issues. Older people can speak to their own GP or an elder abuse service about what service might be appropriate for their family member.

> *"It is also important for the older person to seek support for themselves. It can be very difficult watching a child in distress, particularly if their behaviour is harmful to themselves or others."*

Mind

A mental health service provider that runs the Carer Helpline (1300 554 660) to support the family, friends and carers of people experiencing mental illness. www.mindaustralia.org.au

Carer Gateway

A nationwide network that connects carers to supports in their area. Can be contacted on 1800 422 737, Monday to Friday, 8 am to 5 pm. www.carergateway.gov.au

National Alcohol and Other Drug Hotline

Gives free and confidential advice about alcohol and other drugs. Can be contacted on 1800 250 015.

Family Drug Support Australia

Provides information and support to families of drug and alcohol users, including a 24-hour support line on 1300 368 186. www.fds.org.au

Gambling Help Online

Support for anyone affected by gambling, includes a 24-hour support line. 1800 858 858, www.gamblinghelponline.org.au

Resources

Adult children living at home

https://www.legalaid.nsw.gov.au/publications/factsheets-and-resources/adult-children-living-at-home

This factsheet from Legal Aid NSW discusses ways to prevent conflict when an adult child moves back home, with suggestions for what could be included in a family agreement or set of ground rules. Also describes options for making the adult child leave when they have overstayed their welcome.

Includes a template for a notice to vacate under NSW trespassing laws. This is only applicable to NSW and is not clear or well-formatted.

Adult Children at Home

https://seniorsrights.org.au/wp-content/uploads/2021/04/SRV-AdultChildrenAtHome-HelpSheet-Feb2017-R1b.pdf

This 4-page help sheet is addressed to older people regarding adult children who have returned home or have never left. It mentions some issues the adult child might be experiencing and what the older person should be able to expect in terms of their own rights and comfort.

It includes some questions for guiding conversations and setting boundaries and outlines ways Seniors Rights Victoria could assist if the older person did not feel safe.

Identifying and Responding to Elder Abuse in Intergenerational Families

https://seniorsrights.org.au/wp-content/uploads/2021/07/SRV-Family-violence-in-intergenerational-households-FINAL.pdf

A 4-page resource for family violence practitioners to encourage them to consider issues that might arise in intergenerational households or where their client lives with an older people, putting them at risk of abuse.

Sharing a home with an adult child

https://fls.org.au/law-handbook/health-wills-and-other-legal-issues-affecting-older-people/legal-issues-affecting-older-people/transferring-property-or-assets-in-exchange-for-care/

This section of the Fitzroy Legal Service *Law handbook* is about transferring property or assets in exchange for care. The information is provided by lawyers from Seniors Rights Victoria.

It gives an overview of the reasons an adult child might return home and some of the problems that can affect their behaviour, including violence; depression, anxiety or mental health issues; alcohol or drug abuse; gambling issues; and unemployment or financial difficulties.

It also makes suggestions for what the older person can do to prevent or address the issues, including options for legal avenues should they want the adult child to leave the home.

Moving in with your family—Multigenerational living and 'granny flat' arrangements

https://www.commerce.wa.gov.au/publications/moving-your-family-multigenerational-living-and-granny-flat-arrangements

This 22-page PDF was published by the WA Government with the assistance of Legal Aid WA. It is a really useful publication and should be highlighted on the Compass website.

Includes info on:

- logistics of building a granny flat
- thinking about what you really need
- the granny flat interest and how this affects assets tests
- how to have open and honest discussions with family members
- getting legal and financial advice
- formalising your agreement, and what to include.

Sharing a home with friends and family: Common legal problems older people can avoid

https://queenslandlawhandbook.org.au/factsheets-and-self-help-kits/sharing-a-home-with-friends-or-family

This Caxton Legal Centre factsheet from the Queensland Law Handbook uses case studies to discuss two common scenarios: contributing money to a family member to create a granny flat on their property, and having a family member come to live in the older person's house.

Focused on the idea of having an interest in a home without being on the title, it includes a list of questions the older person should ask themselves prior to committing to any arrangements with their family.

Contributory Parent visas and migration to Australia

- Summary
- Parent visas
- Assurance of Support
- Breakdown of the family agreement
- Challenges for older visa holders
- Safeguards for people on Contributory Parent visas
- Questions for the older person to consider
- Where to seek help

Summary

> *"While many people enter into family agreements to ensure they receive some extra support as they age, often a driving motivation is to provide support for their family—particularly by looking after the grandchildren."*

Many families in Australia rely on a double income and need both parents to be in the workforce. A live-in, retired grandparent can help support their family by looking after young children or picking up and supervising school-aged children. This child care arrangement often forms the basis of older people migrating to Australia on a 'parent visa' to live with their adult child's family.

> *"A parent visa allows older parents to make a permanent move to Australia to reunite with and support their Australian-based family members. It also means they will be able to live in Australia for the remainder of their lives with the support of their family as they age."*

Many people who come to Australia on a parent visa will live with their adult child because this is more affordable than purchasing or renting their own property. However, the shared living arrangements, where the older person is often not on title, leave the older person vulnerable to their child's financial situation and at risk of homelessness should the relationship break down.

Parent visas

> *"People can permanently migrate to Australia on a parent visa as part of the family reunification intake. There are two types of parent visas."*

The Parent visa (subclass 103) costs approximately $6,490 and has a 30-year waiting list, making it impracticable.

Most people therefore opt for the Contributory Parent visa (subclass 143), which costs approximately $47,825 and has a comparatively 'short' 6-year waiting list. For a person to be eligible for a Contributory Parent visa, at least half of their children must live permanently in Australia. The children must also be able to provide an Assurance of Support (AoS), which is similar to a bond.

Visa processing times: https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-processing-times/family-visa-processing-priorities/parent-visas-queue-release-dates

Assurance of Support

The AoS requires the assurer—usually the adult child that the older person will be living with—to commit $10,000 to repay any social security benefits that the older person may access during the first 10 years of their residency. Sometimes the older person provides this money from their own assets, although it is lodged in the assurer's name.

The purpose of the AoS is to ensure that the older person can access social security payments if needed without them being funded by the taxpayer. The requirement signals to the wider Australian population that older migrants who are not of working age will not become a 'burden' on the state.

> *"An older person on a parent visa is not eligible for the age or disability pension, as the pension has a 10-year qualifying residence requirement. This means the only social security benefit the older person can access is the Special Benefit."*

The Special Benefit is available to people who are in severe financial hardship due to circumstances outside of their control but are not eligible for any other benefit. In the context of a Contributory Parent visa, this would likely only occur if there was a breakdown in the living arrangements with the family they had migrated to live with. This breakdown may include experiencing elder abuse or family violence.

Breakdown of the family agreement

There are many reasons conflict and a breakdown of the shared living arrangements may occur. For example:

- The family may not get along together and have different expectations of each other.
- The adult child might be abusive towards the parent and exploitative of them.
- The family may decide the older person is not needed once the grandchildren can look after themselves.
- The adult child and their partner may separate or one of them pass away, and the older person becomes no longer welcome.
- The family may experience economic stress and need to move to a smaller house or feel they can no longer support the visa holder.

If such a breakdown occurs, the visa holder may need to leave the family home. However, they may be reluctant to access the Special Benefit even though they are entitled to it because any money received would be paid from the AoS that was lodged by the family member with whom they are experiencing conflict. As this could inflame the situation with their child, they may decide not to pursue this option, leaving themselves with no support and few options for leaving the abusive situation.

Challenges for older visa holders

When any family agreement breaks down, the older person is most at risk within the dynamic, because they have often contributed a significant part (or all) of their finances to the agreement and have little recourse to recover them. As this translates to not having money to pay for food, housing or daily needs, they often have little choice but to stay with the family and endure the abuse or conflict. In situations where this is untenable they are at risk of homelessness.

> *"In the context of the Contributory Parent visa, the older person is highly vulnerable. They may not speak English, making it difficult to access services and support; they may be unaware of what help is available; and they may be fearful of their visa status and whether this excludes them from support."*

Visa holders come to Australia from a wide range of countries, and each individual will be enmeshed in their local community to a different degree. For some, the community might be a welcome support, but others may feel a sense of shame when they are experiencing elder abuse and not want to share that outside the family. This can inhibit their ability to seek support or to try and resolve the issues.

Often the adult child will have provided the link between the older person and the services they need in Australia, such as helping them access health care, taking them to appointments and community events, and interpreting or translating financial or legal information as necessary. If family conflict arises, all of this support might be withheld, leaving the older person isolated.

Safeguards for people on Contributory Parent visas

Understandably, when going through all the emotional and financial stress, paperwork and prolonged process of applying for a Contributory Parent visa, not many families consider putting safeguards in place in case things go wrong. However, particularly if there are to be shared living or financial arrangements, all families would benefit from frank discussion and written documentation of what is decided.

> *"One of the most important aspects is for older people to maintain control of their finances and ensure they have enough assets or income to support themselves if the agreement ends due to unforeseen circumstances."*

Questions for the older person to consider

- What might happen if the situation breaks down? Or if your child predeceases you, or separates from their partner? Will you have the financial security to afford a house and living expenses independently?
- Will you live with your adult child and their family, or separately? What is each person expected to contribute to the arrangements? This might include finance, ongoing costs, cooking, cleaning, child care, etc.
- What happens when the grandchildren no longer need your care or supervision? Have you given some thought to what your new life in Australia might be like outside of the family home or when you're not providing help and child care?
- What support or effort might your children be able to provide to help you meet other people, be involved in your community and maintain your independence?
- For visa holders who are currently single, what might happen if you met a new partner and wanted to live with them? Would you have the financial security to do so?
- How have you financed the visa? Did you sell property in your home country? Have you retained control of your assets and are you able to access your own money while in Australia?
- Do you feel pressured to migrate to Australia to support your family? Is it the right thing to do at this point in your life? Have you given thought to what it might be like living in an unfamiliar country, unable to speak the language and without your friends and community?

Where to seek help

> *"Any older person on a parent visa who is experiencing elder abuse or challenges should contact the elder abuse service in their state. Their visa status will not inhibit them from being able to receive support, although it may prevent them from receiving housing support or other services. "*

To access the Special Benefit, the visa holder will need to make an application to Centrelink. It would be a good idea to speak to the Financial Information Service first, as its specialist officers will have better knowledge of what payments or support might be available than a general Centrelink officer will.

compass
GUIDING ACTION ON ELDER ABUSE
an EAAA project

Made for all Australians regardless of nationality, culture or language, Compass is an inclusive website navigating elder abuse.

Australian Government
Attorney-General's Department

EAAA
Elder Abuse Action Australia

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