Seniors

Government of **Western Australia**
Department of **Local Government and Communities**

Family Agreements

Knowing Your Rights and Responsibilities

An easy-to-follow guide for older people

Northern Suburbs Community Legal Centre Inc.

This fact sheet deals with the potential benefits of Family Agreements, some of the things that can go wrong, and what you need to know, and do, to protect your rights and your property.

What is a Family Agreement?

A Family Agreement is an arrangement (often verbal) made between an older person and another party (typically family members, friends or carers). The agreement may involve an older person providing a benefit to the other party in exchange for promises of future care. Family Agreements can take a number of forms. They may involve sharing accommodation, joint property ownership, loans or gifts of cash or other assets.

Are Family Agreements a good idea?

Many families have entered into successful, mutually supportive agreements. For instance, a shared accommodation arrangement may give an older person closer contact with their grandchildren. The person may find it rewarding to help care for their grandchildren and generally help run the household. In turn, an older person with an illness or disability can be cared for by family members who live in the same household.

And in this era of high house prices, a joint property purchase with a parent can help younger adults enter the property market much sooner.

Family Agreements can be very attractive – but it is important to be aware of the potential consequences and risks that can arise.

What can go wrong with a Family Agreement?

Some families enter into agreements with the best of intentions, but without knowing the legal or financial implications. In many cases changes in future circumstances are not properly considered. For example:

Granny flats

An older person contributes financially towards the purchasing or building of a granny flat with the intent to live there on the other person's property. However, as granny flats do not have separate legal titles it is often difficult and legally expensive to prove one has a right to live in the granny flat should disputes arise or the owner of the property decides later to sell the home.

Transfer of title

An older person transfers the title of their home to one of their children, so their son or daughter can use the house as collateral – for instance, to get a loan to establish a business. The agreement includes a condition that the older person can reside in the house rent-free for the rest of their life. However, in the event of the son or daughter's business failing, the problem arises for the older person as they no longer have legal title to the property. Here the bank may foreclose on the business loan and seize the house.

Co-purchase of a property

An older person agrees to enter into a joint purchase of a home with their son or daughter, with a view to all of them living in that property for the remainder of their lives. If the relationship breaks down between any of the parties, the older person may find themselves unable to continue living in the property. Such property disputes between co-owners can be legally, emotionally and financially costly for older people, especially when parties do not get along.

Centrelink and tax ramifications

An older person agrees to give away or sell their lifelong home or transfer other assets or large amounts of cash to relatives. However, in disposing of assets they may risk their Centrelink pension benefits, incur a large taxation bill, or affect their eligibility for government-sponsored housing. They may also risk fines and penalties if they do not declare these transactions to Centrelink or the Australian Taxation Office.

Financial guarantees

An older person may provide financial guarantees/security to financial institutions to assist their relatives, carers or friends in buying a house or business. If the person does not understand the implications of giving a guarantee, or agrees to be a guarantor under pressure, they may be at risk of being financially disadvantaged or exploited by the other parties.

See Page 5 for advice and support services

Before you enter into a Family Agreement … follow these 5 key steps.

1 Seek legal and financial advice

Talk to independent experts who can advise on the legal and/or financial implications of the proposed Family Agreement. To the right you will find a list of agencies that can help you.

2 Ensure you understand the ramifications of having your name on the relevant title deeds

For instance, if you are contributing money toward the purchase of a property with a family member or friend, make sure you have legal advice about whether or not your name should be on the title deed and ensure that you follow such advice.

3 Talk to Centrelink, the Australian Taxation Office and other relevant authorities

Explain your proposed agreement and ask about what, if any impact it will have on your rights, entitlements, obligations and benefits. It is better to discuss your plans now, and find out if they will have any detrimental impact on your financial situation, before you take the next step.

4 Be sure you know how this may affect you and your family

Be clear with your family about what you expect from the agreement, now and in the future. Try to anticipate what could happen in the years ahead – even 'worst case scenarios' like a marital break-up or job loss – and talk through these scenarios with your legal representative. Together you may be able to work out with your family appropriate future contingency plans should the unexpected happen.

5 Get it in writing

It is recommended that legal advice be sought to finalise Family Agreements, in writing and all parties should sign and retain copies. It is strongly encouraged that independent legal professionals be consulted with this process.

In summary, Family Agreements can be beneficial, but older people should make sure they are informed about their rights, obligations and the potential risks. Adequate preparation, impartial advice and frank and open discussion with the other parties should take place before any agreement is reached or put in place. Importantly, be sure that you are entering into a Family Agreement because you want to, not just because others want you to.

Where to go for Information, Support and Advice

Older People's Rights Service
t: (08) 9440 1663
e: admin@nsclegal.org.au

Advocare Inc.
t: (08) 9479 7566
1800 655 566 (country)
w: www.advocare.org.au

Public Advocate
t: 1300 858 455
w: www.publicadvocate.wa.gov.au

Public Trustee
t: 1300 746 212
w: www.publictrustee.wa.gov.au

Crisis Care
t: (08) 9223 1111
1800 199 008 (country)

Australian Taxation Office
t: 13 28 61
w: www.ato.gov.au

Centrelink
Financial Information Service
t: 13 23 00
w: www.centrelink.gov.au

Veterans Affairs
t: 13 32 54
w: www.dva.gov.au

Legal Aid
t: 1300 650 579
w: www.legalaid.wa.gov.au

Notes

WA Seniors Card Centre
t: 6551 8800
country freecall: 1800 671 233
e: seniorscard@dlgc.wa.gov.au

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