



Steps to take to arrange a family agreement

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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 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.



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



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