

# Helping your family financially

Understand the risks



LEGAL ISSUES FOR OLDER PEOPLE

It can be a worry for older people when they see their adult children struggling financially. Someone in your family may be in this situation and you may want to help them. Before you decide to help you should be aware of the risks involved – especially if your home is all you have.

## Don't risk your home

Older people may be 'asset rich but income poor'. They may own their home, which may be worth a considerable amount, but their only income may be the pension. If you are in this position you need to think seriously before you use your home as security to help your children.

You could be at risk of losing your home when trying to help your family financially if you:

- guarantee a loan taken out by your child
- take out a loan in your name, with the intention that your child will pay off the loan

- transfer the title in your home to your child so they can use the property as security for a loan, or
- take out a reverse mortgage on your home.

In the first three situations you will be relying on your child to be able to pay off the loans taken out by them or on their behalf. If they don't keep up with the loan repayments the lender has the legal right to take your home you own and sell it to pay off the debt. If the value of your home doesn't cover the loan the lender can also take other property you may own.

If you take out a reverse mortgage you will only need to pay back the loan when you die or sell your home. However you could find that there is too little equity left in the property to pay for aged care accommodation, health care costs or to leave as an inheritance to others.

## Tip 1: Think before you sign

If your child is not able to take out a loan on their own it is probably because the bank does not consider them to be a good risk. That is, the bank is not confident they would be able to pay back the loan and they do







not have assets of sufficient value to act as security for the loan if they failed to pay.

Your child may be overly optimistic about their ability to finance any loan they take out. They may not have considered carefully the consequences for you if things went wrong. As you are the one who has the most to lose, you need to be very realistic.

If the bank doesn't consider them a good credit risk, neither should you.

## **Tip 2: Get independent legal advice**

Legal documents such as loans, mortgages and guarantees can be complex and difficult to understand. Don't rely on your child or a bank representative to explain to you what it will mean for you if you sign any document.

It is important to get independent legal advice before you make any decisions to help a family member financially when your home is your only asset. This means seeing a lawyer

who has not also been seen by your child or the bank, and speaking to the lawyer without anyone else in the room.

This will help you be confident that you understand what you are letting yourself in for. The cost of getting this advice may save you much more money in the long term if things went wrong.

There are often better alternatives to a reverse mortgage. You should also get financial advice before making a decision about a reverse mortgage to make sure you fully understand the risks and alternatives.

## **Tip 3: It's ok to say no**

It can be difficult to refuse a request for financial help from those you love and want to help. You may want to help but it may not be realistic for you to do so. You should make sure you have as much information as you can about the financial situation of the person you want to help, the agreement you are entering into and the risks involved.

If the only asset you have is the home you live in, you should ask yourself:

- Is the risk of losing my only home too high?
- How will I cope if I have to leave my home?
- Where would I live?
- How will this affect my relationship with my other children or what I intend to do about their inheritance?

Not being able to help doesn't mean you don't love your children. You have a right to protect your own interests.

Your children should understand that to risk losing your home when you are in the later stage of your life is particularly difficult. You don't have the same chance to start over as someone younger does.

### Tip 4: A loan or a gift?

If you lend money to a family member it is important that you make it clear in writing whether you intend to give the money as a gift or whether you expect the money to be repaid at some time. The written agreement should be signed by both of you. Without anything in writing it can be hard to prove that the money was a loan not a gift.

A written agreement about whether the money is to be repaid, by when and whether interest is also to be paid, will help if there is any disagreement about this in the future.

You should get legal advice before signing such an agreement.

You can take legal action to recover money that is owed to you. However under the law you only have 6 years from the date the money became owing to you to start court action. It can sometimes be difficult to work out when that date is, and you may need to get legal advice about this.

### Tip 5: Think about your pension

Helping your family financially may affect your pension entitlements. Centrelink has rules about how much of your assets you can 'gift' before your pension will be affected.

If you lend money to a family member the loan will be assessed as part of your assets and could affect your pension entitlement. This includes if you take out a mortgage over your home and loan the money to family.

For more information about how your pension could be affected, see the Legal Aid NSW brochure '*Your home and the age pension*'.





## A true story...

Ellen is 84 years old. She has a serious health condition and her home has been modified to enable her to live independently. She has not left her home in 4 years because of her deteriorating physical health but she is well-supported in her home. Gina, Ellen's daughter, tells Ellen that she needs money to pay off a debt. Ellen offers to transfer her house to Gina so that Gina can use it as security for a loan.

Gina agrees to allow Ellen to live in the home for the rest of her life. Gina defaulted on the loan repayments and failed to respond to documents sent to her by the bank. The bank went to court and got an order that they could repossess and sell the house. Ellen faced being evicted from her home. Ellen had to take legal action in the Supreme Court to try to find a way to stay in her home.



## Where can I get more help?

### Seniors Rights Service

Provides free legal advice and assistance for older people in a range of areas of law.

Tel: **1800 424 079**

[www.seniorsrightsservice.org.au](http://www.seniorsrightsservice.org.au)

### LawAccess NSW

LawAccess NSW is a free information service run by Legal Aid NSW. Anyone who has a legal problem in NSW can contact LawAccess NSW for legal help.

Click on the Chat with us button at

[www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au) or call **1300 888 529**

between 9am to 5pm, Monday to Friday (excluding public holidays).

### Ageing and Disability Abuse Helpline

Provides confidential information, support and referrals for people who have experienced, witnessed or suspect the abuse of an older person living in the community.

Tel: **1800 628 221**

[www.ageingdisabilitycommission.nsw.gov.au](http://www.ageingdisabilitycommission.nsw.gov.au)

### Financial Information Service (FIS)

FIS is a free service provided by Centrelink.

FIS can help you to understand how the helping your family financially may affect your pension. Tel: **131 021**

[www.servicesaustralia.gov.au/financial-information-service](http://www.servicesaustralia.gov.au/financial-information-service)

## Other brochures available:



### Adult children living at home

What do you do if you want them to leave?



### They want me to leave

Staying in your house when your partner dies



### Are you experiencing violence or abuse?

You can make it stop



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

Think about planning ahead



### Are you a grandparent?

Your legal questions answered



### Your home and the age pension

What you need to know



### Why make a will?

A guide to making a will



### Moving in with the family

Make sure you protect your interests

This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing, however it may change. For more information contact LawAccess NSW on **1300 888 529**.

This publication is available in English and Simplified Chinese.



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Order brochures online at: [www.legalaid.nsw.gov.au/ways-to-get-help/publications-and-resources](http://www.legalaid.nsw.gov.au/ways-to-get-help/publications-and-resources)

For more information, visit: [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)

### Do you need help to contact us?



If you need an interpreter, call the Translating and Interpreting Service (TIS National) on **131 450** (9am–5pm) and ask for LawAccess NSW.

### Do you find it hard to hear or speak?



If you are deaf, or have a hearing or speech impairment, contact us through the [National Relay Service NRS](http://www.nrs.gov.au). Ask for LawAccess NSW on **1300 888 529**.

