

Adult children living at home

What if you want them to leave?



LEGAL ISSUES FOR OLDER PEOPLE

It's not uncommon for older people to find themselves sharing their home with an adult child. Adult children may want to move in with their parents because they have lost their job, had a relationship breakdown or for some other reason.

You may be thinking about offering your child a temporary 'refuge' until they are able to support themselves again.

You may already be in this situation. Or perhaps your children never moved out of home in the first place.

However, it is not unusual for older people to want their adult children to leave their home because they are abusive and disrespectful, because they don't make any financial contribution or contribute to the house work, or simply because the arrangement isn't working anymore.

Prevention is better than cure

Although your parental obligations end once your child becomes an adult, it is understandable that you will continue to be concerned for the ongoing welfare of your children. However, your welfare is equally important. It's up to you if you want to have your adult child in your home or not, and it's OK to say no.

If you do decide to let your child live with you it's important that you are both clear about how this will work so that there won't be any misunderstandings down the track.

Think about setting the ground rules before you agree to share your home. It is a good idea to have a written agreement that you both sign and date.

The agreement can cover things like:

- how long do you want them to stay?
- will they pay you money?
- will they contribute to household bills?
- can they have friends visit or to stay overnight?
- will you provide any domestic services for them or will they be responsible for their own laundry and meals?
- will they be required to share in the cleaning and general upkeep of the home?
- can they smoke or drink in the home?
- if they break the rules how much notice will you give them to leave?

Both of you should keep a copy of the agreement.

You can use a special Residential Tenancy Agreement if you want your child to pay rent and be a tenant in your home.

You can get a Residential Tenancy Agreement form from most newsagencies and stationary stores, or online from NSW Fair Trading www.fairtrading.nsw.gov.au or the Real Estate Institute of NSW www.reinsw.com.au

They live with me already. Can I make them leave?

As the owner or renter of your home you have a right to say who lives there. Even if you invited someone into your home, you have a right to change your mind.

However, there is no easy way to make someone leave your home if they refuse to go, especially when it is your son or daughter. You may want them out but still be concerned about their welfare and your relationship with them.

You have a few options if you want your child to leave.



Ask them to leave

Choose a suitable time to have a conversation with your child – if possible when neither of you is tense or angry nor rushed for time. Be direct about why you want them to leave. Set a non-negotiable timeframe for this to happen. Remember – it is your home.

Try mediation

If talking doesn't work, a Community Justice Centre (CJC) may be able to help you. A CJC is a free government service that helps people, including families, resolve disputes by talking to each other in a safe and informal environment. It is voluntary and people can't be forced to attend. See the '*Where can I get more help?*' section for details of CJsCs.

Use the law

If mediation also fails then you might have to take legal action against your child. The type of legal action you can take will depend on your situation. You should talk to a lawyer about whether the law can help you.

How can the law help?

The law may be able to help if your child is a tenant in your home, they threaten or assault you or they are trespassing on your property.

Your child is a tenant in your home

The law may regard your child as a tenant in your home if you have agreed to let them live

in your property in return for them paying you money or caring for you or doing maintenance on the house.

If this is the case you may be able to ask the NSW Civil and Administrative Tribunal (NCAT) to help you evict them.

You should talk to a lawyer about whether your child is a tenant. They may not be a tenant but a boarder or lodger, in which case you will have to take different steps.

Your child threatens or assaults you

You don't have to tolerate violent behaviour from your child or anyone else. If they have made threats or been violent towards you, you can tell the police and they may be charged with a criminal offence.

You can also apply to a Local Court for an Apprehended Violence Order (AVO) – a court order that prohibits or restricts your child's behaviour. The police may help you with this or you can apply to the court on your own.

The court can make an 'exclusion order'. This means your child will have to move out of the home—and can also prohibit them from approaching the property. They can be charged by the police if they disobey the order. An exclusion order can be made even if your child co-owns or co-rents the property with you.

See the '*Where can I get more help?*' section for details of where to get help for domestic violence.



TIP

If your safety is at risk:

- Contact police if violence is involved.
- Stay with a relative or close friend or book into a hotel until the threat or abuse stops.
- Change your telephone number once your abusive child has left the home.
- Change the locks to the property.

Your child is trespassing on your property

It is a criminal offence—called trespass—for someone to come onto your property without your agreement, or to refuse to leave after you have asked them to, unless they have a legal right to be there. (They will have a legal right to be there if they are a tenant or a co-owner of the property).

If your child is trespassing there are a number of things that you can do.

Talk to the police

Write to your child asking them to leave by a certain date. You can use the Cover Letter and the Notice to Vacate examples on this page.

If they refuse to leave you can try asking the police to help you evict them. However, whether the police will help, and the type of help they will give, can vary. Some police are reluctant to get involved in what they regard as a private dispute between family members. The police may want evidence that you own or rent the property. You should also show them a copy of the letter asking your child to leave. If the police agree to try to persuade them to leave this is the easiest way to remove your child from your home.

Send a letter from a solicitor

You could ask a solicitor to send a letter to your child noting they are trespassing, requesting they leave and threatening legal action if they refuse.

Examples of a Cover Letter and Notice to Vacate

COVER LETTER

[Date that you give, post or email the letter to your child]

Dear [Name of child]

[I/We] want you to leave [address of property]

[I/We] have asked you to leave our property, and you have refused to do so.

[I/We] now have no other option but to use the law to make you leave.

Please read the attached Notice to Vacate.

[Signature of parent]

NOTICE TO VACATE

To: [Name of child]

About: [Address of property]

[I/We] withdraw permission for you to continue to live in [my/our] property.

You must vacate the premises by [date].

If you don't leave by this date you will be in breach of section 4 of the *Inclosed Lands Protection Act 1901* and will be trespassing on the property.

[I/We] will report your trespass to the police and ask the police to remove you from the premises.

[I/We] may also remove your personal belongings from the property and change the locks without giving you any further warning.

.....

...../...../.....

[Signature of parent]

[Date delivered/
posted/emailed]

Change the locks

As the owner of the property you can change the locks and refuse your child re-entry to the property.

Apply for a Supreme Court injunction

If all these options fail, you can ask the Supreme Court for an injunction – a court order directing your child to stop trespassing on your property and to leave the property. If the order is made and they still refuse they will be in contempt of court and can be arrested and gaoled for a period of time. You will need a lawyer if you decide to do this. Court action is expensive and complex and should be used as a last resort.



TIP

Your child may have a mental illness which makes it difficult for them to function well in the community or live independently. You may feel torn between your desire to provide care, support and accommodation for them, and the need to protect yourself and other people living in your home from abusive behaviour.

The *'Where can I get more help?'* section has details of what to do if your child has a mental illness.

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

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 icon at 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

Carers NSW

An association for relatives and friends caring for people with a disability, mental illness, drug and alcohol dependencies, illness or who are frail. Provides information, referrals, support and counselling to carers.

Tel: **1800 242 636**

www.carersnsw.org.au

NSW Civil and Administrative Tribunal (NCAT)

Tel: **1300 006 228**

www.ncat.nsw.gov.au

Domestic Violence Hotline

Provides free and confidential counselling, advice and assistance.

Tel: **1800 656 463** Tel: **1800 671 442**

Wayahead Mental Health Support Line

Provides information, support and referral to services that can help with mental health issues for you and your family—including community mental health, crisis intervention and treatment services and accommodation.

Tel: **1300 794 991**

www.wayahead.org.au

Community Justice Centres

Free government service to help people resolve disputes through mediation.

Tel: **1800 990 777**

www.cjc.justice.nsw.gov.au

Women's Domestic Violence Court Advocacy Service (WDVCAS)

Your local WDVCAS can help you apply for an AVO to protect you from further violence or abuse or help you find out what options are available to you. It can also help you with housing, financial assistance, counselling and related legal issues.

Tel: **1800 WDVCAS (1800 938 227)**

Other brochures available:



Why make a will?

A guide to making a will



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



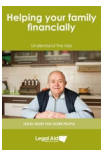
Are you a grandparent?

Your legal questions answered



Your home and the age pension

What you need to know



Helping your family financially?

Understand the risks



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 Arabic, English and Sim Chinese.



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

For more information, visit: 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](#). Ask for LawAccess NSW on **1300 888 529**.

