



11 Contracts and family agreements

Contracts

Whether building, buying, renting, moving to a retirement village, purchasing services or refinancing, you are likely to be entering into a legal contract between yourself and another party.

Some of these contracts may have terms that are agreed verbally. However, for the purchase and sale of real estate, retirement villages and park homes, by law contracts must be in writing. It is a good idea to always try and have a contract in writing. Verbal contracts are very difficult to prove if things go wrong.

Contracts can be thought of as setting rules between you and another party or parties. The contract rules, called terms or conditions, set out what each party will do for the other, the time by which such actions will be done and what happens if any party fails to play by the rules.

The contract should set out all the rules so there is no uncertainty. The law treats contracts seriously and you should be very careful before entering into a contract. If you sign a contract, you are agreeing to abide by the terms set out in the contract. This will be enforceable through the courts.

For many contracts the law in Western Australia does not require that the contract contain a cooling off period. If the contract does not include a cooling off period, you cannot get out of a contract because you have changed your mind.

Contract checklist

- Make sure all things that are important to you are clearly included in the contract.
- Take as much time as you need to read and understand a contract — don't be rushed! Before signing anything, ask for a copy of the contract to take away with you to read carefully and to show to a friend or advisor.
- Consult a lawyer when adding your own terms to a contract so that they are clear and enforceable.
- Cross out and initial any terms in a contract that you want to delete or change and ask the other party to initial the changes and deletions as well.
- Don't use liquid paper on a contract.
- Don't sign a blank contract or allow details to be filled in later. Draw a line through any blank spaces that do not need to be filled in.
- Remember that every person who is a party to the contract is usually responsible for making sure that the terms of the contract are followed.
- If buying, make sure that the person/s you are buying the property from is/are legally entitled to sell the property.
- Ask for a copy of any contract you sign, you are entitled to a copy.

Where can I get more information?

Seniors Housing Advisory Centre
1300 367 057

Legal Aid Information Line
1300 65 05 79

Family agreements

A family agreement is an arrangement made between an older person and another party, usually family, friends or carers. The older person agrees to sell or transfer their home, assets or large amounts of cash to relatives in exchange for accommodation and current or future care. Family agreements can take a number of forms and are often verbal.

Examples of when you may enter a family agreement are if you:

- gift or loan money to family, carers or friends to buy a house or establish businesses;
- provide financial guarantees/security to family, carers or friends to buy a house or establish businesses;
- transfer a house to children on the understanding that you will have a right to remain living there;
- pay to build a granny flat on another's property; or
- co-purchase a property to share accommodation.

Family agreements are often entered into for all the right reasons, but people need to stop and think about possible pitfalls.

Disposing of assets may affect your pension, incur a large taxation bill or affect your eligibility for government-sponsored housing. You risk fines and penalties if you do not declare these transactions.

It is important to think about how the arrangement will work not only now but also in the future. Consider what would happen in changing circumstances, such as marital break-up or if you want to move somewhere else.

Protect your interests and talk to people you can trust. You should never be pressured or harassed into making a decision.

Kim-Ly

Kim-Ly decided to sell her home. With the proceeds she paid for an extension to her son Trang's house so that she could live there with him and his wife, Lilly. Kim-Ly also gave Trang \$100,000 to assist him expand his business.

The arrangement worked well for three years. Then Trang's business went bust and his marriage broke down. The home was sold and the proceeds split between Trang and Lilly. Kim-Ly received nothing.

Trang decided to move up north to look for work and at the age of 72, Kim-Ly had no choice but to find a new place to live without much money or assets.

Family agreement checklist

- Seek legal and financial advice. Don't enter into an agreement without knowing the legal or financial implications.
- Be clear about what you expect from the agreement and your family, now and in the future.
- Talk to Centrelink, the Australian Taxation Office and other relevant bodies to check any impact on your liabilities or income.
- Put the agreement in writing with each party signing and getting a copy.
- Protect your interest by putting your name on any new title.

Where can I get more information?

The Department of Communities has a guide on Family Agreements. For a copy call the Seniors' line on (08) 6551 8800 or visit the website at: www.communities.wa.gov.au

The Older People's Rights Service may also be able to assist, call (08) 9440 1663.

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