

# Caring for an Ageing Parent at Home

*The issues confronting you in retirement are becoming more complex.*

*To make informed choices and decisions, you need information which is clear, simple and easy to understand.*

## Talk to the experts

*Our experienced team has been advising on the full spectrum of legal issues affecting older Australians for many years and has the expertise to help you bring all the pieces of the puzzle together.*

**Contact us on  
07 3236 2900**



## The benefits of Family Agreements

In the new millennium, with our ageing demographics, limited available places in aged care facilities, rationed community care packages and a Government encouraging people to stay at home as they age, new pressures are arising for families to care for elderly parents within the home.

Often this means adult children may have to give up their job or their business to do so.

This is where **Family Agreements** become important.

### What are Family Agreements?

Family Agreements have been described by various commentators as:

- Independent Care Agreement
- Personal Services Contracts and
- Lifetime Care Contracts

They are arrangements in which (usually) older people transfer property, or pay compensation to, someone (usually a member of their family) in exchange for a promise of "care for life".

### Why are Family Agreements needed?

For most of us perhaps, the thought of a care agreement with a family member is, at best, curious and at worst, spurious.

Children are expected to look after their parents for free, aren't they?

Today, however, the realities are that many adult children are highly leveraged, servicing significant personal debts, with little in savings. They simply cannot afford to limit their working hours or even to give up their job to look after ageing parents without compensation, especially where they have their own children to raise.

Even if they are eligible for social security to perform the task, such as the Carer's Payment or Allowance, this is invariably inadequate compensation especially where the adult child has to give up a career or jeopardise a successful business.

Added to this are the features of our contemporary ageing landscape which act as an incentive to retain the caring role within the family, including:

- A personal aversion to the 'institutional' care of aged care facilities, such as nursing homes
- The lack of aged care places
- People are living longer and, as a result, living longer with disabilities
- Our fixation in later life to preserve assets (e.g., the icon of the family home) for succeeding generations

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- Our consequent reluctance to dissipate assets (especially the family home) to pay any premium for assisted care, such as an Accommodation Bond in a hostel and
- Our predilection for 'impoverishing' ourselves in order to obtain and maintain social security entitlements and to reduce the tax impact of ageing

It is in this context that the Family Agreement becomes a potential lynchpin both to maintain our independence as we age and become frail, but also to sustain our familiar and familial environment which can be such an important ingredient for happiness for most older people. Even Government recognises and encourages this in its support for 'ageing in place' in providing incentives to people to stay at home as they age.

## A family scenario

The following example is a typical scenario in which Family Agreements play an important role.

An 83 year old woman who has four adult children and has been living independently has started to become physically more frail and unable to cope on her own. She needs assistance in some daily living activities and has reached a care crossroads.

She and her family are confronted by the necessity to consider an aged care facility (such as a nursing home or hostel), community care or the family itself as the vehicle for her ongoing care.

After family discussion, they agree to explore what solutions are available within the confines of the family unit.

One of the daughters suggested that her mother should sell her unit and use the proceeds, in part, to build an extension to the daughter's home to accommodate the mother. The daughter, who was working from home and had her own children, proposed that she would also provide the necessary daily care for her mother.

The other children were anxious about the idea as, subliminally, they could see a part of their inheritance potentially being consumed to bolster the value of their sister's asset.



A **Family Agreement** was developed with the involvement of all family members, and provided for the following:

- The mother's unit would be sold
- Part of the proceeds would then be used to build the extension to the daughter's home where the mother would live
- The monies used by the mother in improving the daughter's property would then become a debt due by the daughter to the estate of the mother on her death or transfer to an aged care facility
- The debt, however, would be amortised over time by the comparable community care rate in recognition of the care provided by the daughter
- The care services to be provided by the daughter were set out in detail in the agreement
- The mother would pay for her own personal expenses and a proportion of the household expenses
- A mutually agreed person (not a member of the family) was appointed to monitor the agreement to ensure that it was complied with and also to settle any disputes that might arise during the course of the arrangement
- If the daughter breached the agreement, the debt would become immediately due and payable together with interest

As a self-funded independent retiree, the arrangement would have no impact on any pension entitlements of the mother.

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Level 10 193 North Quay Brisbane QLD 4000 | PO Box 13067 George Street Post Shop QLD 4003

Telephone 07 3236 2900 | Fax 07 3236 2907 | Email enquiry@crhlaw.com.au | Web www.crhlaw.com.au



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## Benefits of documenting a Family Agreement | What to do when you have recently separated

As this scenario shows, a clearly written agreement, drafted with the assistance of an adviser with the expertise to identify potential pitfalls, has the following advantages:

- It acts as an agreed, transparent agenda for the family as a whole and the mother in particular, clearly setting out the care obligations and financial arrangements.
- It allays suspicions and appeases the other family members' fears for their inheritance and natural concerns about one child's potential 'unjust enrichment'.
- It resolves a conflict which had the potential to corrode at best, and implode, at worst, the family relationship.
- It provides a legally enforceable guarantee of personalised, responsive and quality care in a family environment
- It achieves the desired aim – caring for the elderly parent at home
- Most importantly, it gives peace of mind to the mother at a time in her life when she desperately craves it.

## Important things to consider when preparing to take on care of an elderly family member

1. What are the income tax and social security implications? This is particularly important where there is a transfer of assets or payment of compensation from a parent to an adult child in return for care.
2. Do all family members have a thorough understanding of what the care for life promise embodies? It could well be that after proper and thorough discussion and consideration of the issues of what the "care for life" agreement entails, the parties may decide not to proceed with the idea.
3. What impacts will this arrangement have on other legal documents such as an Advance Health Directive or Enduring Power of Attorney?

Above all, getting good advice up front is key to ensuring family conflicts are minimised and your access to government benefits is maximised.

## When to seek legal advice

It is important to seek legal advice whenever you have a significant change to your family situation, living arrangements or health.



## Find out more

Visit [www.crhlaw.com.au](http://www.crhlaw.com.au) or call us on 07 3236 2900 for further information on:

- Wills
- Estate Administration
- Estate Disputes
- Enduring Powers of Attorney
- Advance Health Directives
- Elder Life Services

We have a range of free tools and guides to assist you to navigate the spectrum of issues faced by Australian seniors and their families.

Note: The information contained in this document does not constitute legal advice. For advice that takes into account your personal situation we recommend you contact us by calling 07 3236 2900.

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