

Let's Make It **Legal** guide



Foreword

Older people in Western Australia are part of a strong foundation of knowledge, skills and experience that feeds into a better future for all of us. With a significant proportion of our population continuing to age, it is vital we recognise the uniqueness of this community and the benefits of what they offer.



People understanding their choices and enacting how they want to live is key to self-determination and also a platform for voices to be heard. This includes education and raising awareness for greater tolerance, less discrimination or prejudice and keeping people safe from harm.

The Council on the Ageing WA [COTA (WA)] has developed this simple guide that outlines key information for older people to better understand their rights in many areas that affect their lives. This can often be complex and involve various legal rules which could be difficult to comprehend. The guide is a starting point and offers an overview of what older people need to consider and where to seek further assistance. The Northern Suburbs Community Legal Centre is proud to be part of this work and acknowledges the COTA (WA) efforts to bring this publication together.

I encourage service providers as well as the community to read the guide and gain a greater scope of the issues and decisions many older people are facing. Knowledge is power and equality of access to services and outcomes means older people can live a full life of their choice.

Kathy Cokis
CEO, Northern Suburbs Community Legal Centre



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legal centre

Introduction

Who has not been surprised by the legalities of something which seemed, on first encounter, to be relatively straightforward? It could have something to do with renting a house or apartment; your rights in dealing with a dispute in a retirement village; making sure a Will is valid or not open to interpretation or making sure that your end-of-life-wishes are readily available should you become incapable of communicating them if required.



This Guide will help you to untangle the intricacies of many issues which have already, or may confront you, as you continue your life's journey. It complements our published Guides (The At Home Guide; The Goodbye Guide, available in English, Simplified Chinese, Vietnamese, Polish, Italian and Greek and Interruptions to Daily Living Guide, available in English, Simplified Chinese, Polish, Italian and Greek and Understanding the Mistreatment of Older People in providing easily accessible and comprehensive information on matters of importance to older people and their families or carers.

What do we mean by 'legalities' or 'legal issues'? To put it simply, they cover issues which have a legal underpinning covered by a law. This means that if you do not take the legal 'requirements' of the relevant law into account when dealing with them, you are likely at one extreme to break the law. At the other extreme, it is likely that your intentions are not followed or are challenged in a court of law. Either way, the outcome is not what you would want!

As is the case with many issues as we grow older, it is always a good idea to make known to a person or people you trust, exactly where the relevant legal documents are located. This is very important should you become unexpectedly unable to communicate this crucial information, due perhaps to an accident or to an unanticipated event. It is always a good idea to have legal documents stored in more than one location, apart from a safe place at home. Certified copies, which hold the same status as the originals, should be located outside your home, for example with a family member or members and/or with a trusted friend. More information on who can certify a copy of an original document can be found in this Guide.

The Guide has been formatted to enable you to read it in its entirety or to find a section or issue which is important to you. Likewise, the online version is also easy to navigate to find a specific issue or topic. We hope that the Guide helps you to navigate some of the legal complexities of life as you grow older.

Chris Jeffery
Chief Policy Officer, Council on the Ageing (WA)

FORMAT OF THE GUIDE

Disclaimer: This guide is intended to provide a summary and overview. It does not constitute legal advice. It is important to understand every individual situation is different and some parts of this Guide may not apply to everyone.

We recommend you seek independent legal advice if you have any concerns about the issues discussed in this guide and when committing to a legal contract.

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HOUSING AND ACCOMMODATION

Dealing with laws and by-laws and rights and responsibilities of different housing and accommodation options can be difficult. This part will address the laws and rights you should be aware of in regard to housing and accommodation.

Summary of what will be covered in this section

Subject	Act	Inclusions	Costs	Aliases	Requirements
Renting	Covered by the Residential Tenancies Act 1987.	Includes private rentals including through real estate agents/property managers and social housing (public and community housing).	Tenants pay rent and utilities usage for exclusive occupation of the premises.	A residential tenancy agreement gives either a fixed or periodic term and sets out the conditions of the tenancy.	Residential tenancy agreements must be in the form required by the Act. Bonds must be held by the Bond Administrator.
Strata Title and Community Title	Covered by the Strata Titles Act 1985 and the Community Titles Act 2018	Includes strata schemes for the over 55s. Strata units in Retirement Villages are also subject to the Retirement Villages Act 1992.	Can purchase or lease property. Usual council and water rates. Strata levies are set by each scheme and payable annually or quarterly.	A number of individual ownership/common property scenarios exist.	
Retirement Village	Covered by the Retirement Villages Act 1992, Retirement Villages Regulations 1992 and Retirement Villages Code 2022.	Includes units and apartments for 55s and over, retired and spouse and/or partner. May have common village facilities.	Can purchase a lease or licence to occupy, rent premises or buy a strata unit. Recurrent charges are payable for common services.	May use many names, including 'lifestyle village', 'lease for life', 'independent living units', 'lifestyle agreement'.	Rights and responsibilities depend on individual village agreements.
Residential Park	Covered by Residential Parks (Long-stay Tenants) Act 2006.	Includes mixed-use parks and lifestyle villages for over 45s.	Can rent the park home, but the underlying land is always leased.	May use many names, including 'lifestyle village'.	Structure (i.e. the park home) must be relocatable.

Subject	Act	Inclusions	Costs	Aliases	Requirements
Residential Aged Care	Covered by the Aged Care Act 1997 (Cth)	Includes hostels, lodges and nursing homes with high or low care.	Refundable accommodation deposit payable upon entry or rental-style daily accommodation payment. Other daily fees, care fees and fees for service payable.	May receive Australian Government subsidy called refundable accommodation contribution or rental-style daily accommodation contribution.	May require means (income + assets) assessment to determine eligibility for Australian Government subsidy.
Boarding and Lodging	Covered by Common Law on contracts. Not covered by Residential Tenancies Act 1987.	Includes licensed lodging houses and private arrangements. Excludes holiday accommodation.	Rent may include meals and other services or just a room.	May have exclusive occupancy of own room and share common areas.	Rights and responsibilities depend upon individual agreements.



Renting a Property

Tenants' Rights and Laws

As a tenant, you have rights and duties under the *Residential Tenancies Act 1987*. All Residential Tenancy Agreements must be in the form required by the Act. Commercial property managers may have 'standard' additional terms, which you do not have to agree to. Residential tenancy agreements must not be inconsistent with the Act (i.e. you cannot contract out of the Act). The Act also applies to residential tenancy agreements made verbally (e.g. handshake deals).



The rights and duties contained within the Act may not be written into your residential tenancy agreement, but they will automatically apply to your tenancy regardless.

What Issue is the Legislation Addressing?

More seniors are reaching the age of retirement without owning a home and the number of seniors involved in the rental market is increasing.

Short leases, fixed incomes, the lack of affordable rental options and the limited ability to modify a rental property has resulted in many older tenants encountering tenure insecurity.

The *Residential Tenancies Act 1987* aims to strike a balance between landlord and tenants' rights and regulates tenure security.

Why should you be aware of the Legislation?

It is important for seniors to be aware of the *Residential Tenancies Act 1987* in order to understand their rights and obligations as a tenant.

Overview of Rights and Obligations

Rights

- You do not have to pay more than 2 weeks' rent in advance
- You do not have to pay more than 4 weeks' rent for bond

- You cannot be evicted without an attempt by the landlord to resolve the matter informally before eventually obtaining a Court order
- You do not have to pay more than \$260 for a pet bond; you do not have to pay a pet bond for an assistance dog

You have the right to

- Be given 30 days' written notice of the lessor wanting to end a fixed term agreement
- Be given 60 days' written notice to end a periodic tenancy agreement
- Be given a copy of the residential tenancy agreement and a property condition report completed by the lessor within 7 days of occupying the premises
- Be given 60 days' notice of a rent increase
- Be given rent receipts within 3 days of the lessor receiving the rent
- Be provided with reasonably secure premises
- Instal safety fittings
- Not be discriminated against
- Have reasonably clean premises at the start of your rental
- Have quiet enjoyment of the property
- Have repairs and maintenance done
- Apply to the Magistrates Court for orders if the lessor has broken the residential tenancy agreement
- Refuse the lessor access except in certain circumstances and with proper notice (e.g. for inspections)

Obligations

As a tenant you have responsibilities under the Act, including:

- Check and return the property condition report to your lessor within 7 days
- Pay rent on time
- Care for the premises
- Pay for any damage caused by you or your guests

- Report the need for any maintenance and repairs
- Not to make alterations or additions without the lessor's permission except for installing safety fittings
- Not to alter, remove or add a lock or security device without the lessor's consent except in the case of domestic violence:
 - After a perpetrator's interest in a tenancy agreement is terminated
 - If necessary, to prevent family violence that the tenant suspects is likely to be committed against them or their dependents
- Not to use or permit the premises to be used for an illegal purpose
- Not to cause or permit a nuisance
- Not to interfere with the peace, comfort or privacy of neighbours
- To give correct written notice when you leave
- To leave property in a similar condition to when you rented it, aside from normal fair wear and tear

Starting a Tenancy

Most landlords will require you to fill in a rental application form.

Making an Application

Please make sure you read and understand the form before you sign it. If you have any questions or concerns, you can ask the landlord for assistance.

The application will usually allow the landlord to perform a creditor reference check on you.

Once you have signed a residential tenancy agreement, its terms are binding on you. For example, by signing, you have accepted the property as it is and therefore the landlord does not have to provide you with any additional fixtures or alterations.

Discrimination

According to the *Equal Opportunity Act 1984*, a prospective applicant for a tenancy has the right to not be discriminated against based on the following grounds:

- Age
- Sex

- Disability
- Race
- Marital Status
- Pregnancy
- Sexual Orientation
- Family Responsibility or Family Status
- Religious or Political Conviction
- Impairment

This makes it unlawful for a real estate agent or landlord to decline an application for tenancy or treat someone less favourably based on these grounds. For example, if you have reason to believe that your tenancy application has been declined because of your age, this is discrimination, and you should contact the Equal Opportunity Commission for assistance.

Keep in mind, you may need to provide evidence if you are making a complaint so ensure you keep any evidence or supporting material and make a written record of all correspondence with the landlord. In order to lodge a complaint with the Equal Opportunity Commission you must make the complaint within 12 months of the discrimination taking place.

For more information contact:

Equal Opportunity Commission

T: 08 9216 3900

W: www.equalopportunity.wa.gov.au

Cost of Renting a Property

A landlord can require you to pay the following:

- Agreed rent amount
- A maximum of two (2) weeks rent in advance after the first two (2) weeks of the tenancy
- One security bond (maximum of four (4) weeks rent)
- A maximum of \$260 for a pet bond (if applicable)
- Option fee

It is important to get and keep a receipt for any money you pay.

What is an Option Fee?

A landlord may charge an option fee when a potential tenant makes an application to rent a property.

The option fee is capped at \$50 or \$100 depending on the rent and location of the property.

If your application is successful and you decide to go ahead with tenancy, the landlord will either repay the fee to you or use it towards your rent.

If your application is successful but you decide not to go ahead, the landlord is permitted to keep the fee.

If your application is unsuccessful this fee must be refunded to you.

What is a Residential Tenancy Agreement?

A residential tenancy agreement is a legally binding contract between you and the landlord.

The residential tenancy agreement set outs the terms of your tenancy such as:

- How much rent you have to pay and how often you have to pay your rent
- Whether you or your landlord will maintain the garden
- Fixed term (e.g. 12 months) or is a periodic tenancy (e.g. month to month)
- There is no law regarding the specific number of people residing at the property, however, a landlord has the power to request the names of all people residing in the property in the agreement
 - It is unlawful to falsely provide your name to your landlord

Fixed versus Periodic Agreements

Periodic Tenancy: A tenancy for an indefinite amount of time on a rolling basis (e.g. monthly, quarterly).

Fixed Term Tenancy: A tenancy for a definite amount of time, e.g., for 12 months

When discussing how long you want the lease to last, keep in mind that breaking a fixed term agreement earlier than agreed may make you liable for costs and could entail additional rent payments.

Written versus Verbal Agreements

A tenancy agreement can be written or verbal.

Written Agreement: A written agreement must be in the prescribed form (Form 1AA).

Prescribed Form 1AA can be found at:

<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/rtagreeform1aa.pdf>

This form contains the terms applicable to all residential tenancy agreements.

Verbal Agreement: A verbal residential tenancy agreement can be made. It is advisable not to use this type of agreement as they are hard to prove in court if there is a disagreement.

If a verbal contract is entered into, the landlord must provide you with the prescribed form (Form 1AD).

Prescribed Form 1AD can be found at:

<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/rtaform1ad.pdf>

Importance of the Agreement

The Residential Tenancy Agreement sets out yours and your landlord's responsibilities and rights.

You should be given a copy of the agreement fourteen (14) days before you sign it. If you are unsure, seek advice before you sign it.

This is important, as there are significant consequences for breaching the agreement.

What you must be given at the Start of your Tenancy

Documentation received at the start of your tenancy includes:

- Copy of the signed agreement (Form1AA) within fourteen (14) days of moving in
- A copy of 'Information for Tenant' (Form1AC) if it is a written agreement

Prescribed Form 1AC can be found at:

<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/1actenantinfo.pdf>

- A copy of the information for you with a non-written residential tenancy agreement (Form 1AD) within fourteen (14) days of moving in, if it is a verbal agreement

Prescribed Form 1AD can be found at:

<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/rtaform1ad.pdf>

- Two copies of the property condition report within seven (7) days of moving in
- A bond lodgement form which you must sign
- The name and address of the landlord

During the Tenancy

Your residential tenancy agreement will contain a clause specifying the amount of rent you must pay.

Rent Increases

Rent increases may occur during your tenancy. The process differs depending on whether you have a fixed term tenancy or a periodic tenancy.

Fixed Term

The rent can only be increased during the fixed term if the increased amount or method of calculating the increase, is stated in your residential tenancy agreement (e.g. 3% increase).

Your landlord must give you sixty (60) days' notice of the rent increase.

Periodic Agreement

Rent cannot be increased more than once every six months and your landlord must give you sixty (60) days' notice of the rent increase.

Notice must be given by 'Notice of Rent Increase' Form 10 or 'Notice of Rent Increase Calculated by Tenant's Income' Form 11.

Prescribed Forms 10 and 11 can be found at:

<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/nottotenrentinexcprentcalbytenincform10.pdf>

<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/notoftenantrentincreaseform11.pdf>

Excessive Rent Increases

It is important to remember that a landlord is prohibited from increasing your rent excessively.

However, there are limited circumstances where you may be able to argue that the increase is excessive.

If you believe your rent has been increased excessively, you can either:

- A. Negotiate with your landlord
- B. Apply to the Magistrate's Court within 30 days of receiving the rent increase notice

The court will consider the following factors to decide whether the increase is excessive:

- Rent for similar premises
- Estimated capital value of the premises
- Costs of services provided by lessor or tenant under the agreement
- Value of furnishings, fixtures and facilities provided to tenants
- General condition of the property
- Any other relevant matter

If you make an application to court, it is important that you bring evidence about each of these factors in order to make a successful claim.

Right to Repairs

You and your landlord both have responsibilities for maintaining the rental property under the *Residential Tenancies Act*.

Landlord Responsibilities

The Landlord must:

- Provide the property to you in a reasonable state of cleanliness and repair. If you are not satisfied with the state of the property, contact your landlord as soon as practicable and ensure you get any agreement for cleaning or repairs in writing
- Maintain property in a reasonable state of repair
- Comply with health and safety laws
- Conduct any repairs in a timely manner when repairs are needed

- Repair fixtures and chattels provided with the property such as lights, swimming pool, white goods and furniture; however, the landlord is not responsible to repair any fixture that you were told was not working prior to your agreement

Tenant Responsibilities

You are not responsible for general wear and tear which refers to deterioration that occurs over time through ordinary activities such as the carpet being worn or curtains fading.

The tenant must:

- Keep property in reasonable state of cleanliness
- Advise the landlord of damages that occur as soon as practicable
- Not negligently or intentionally damage the property

If repairs are required, due to damage you have caused, you must inform the landlord and discuss the repairs needed.

Do not undertake your own repairs without landlord consent as you may be held liable for poor repairs. Importantly, the repairs must be undertaken at a reasonable price.

Undertaking Repairs

1. In writing, inform the landlord of the issue and ask them to repair it.
2. If the landlord fails to respond to the request, you can issue them with a 'Notice to Lessor of Breach of Agreement' (Form 23).

Prescribed Form 23 can be found at:

<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/nottolessorbreachofagreementform23.pdf>

3. If the landlord fails to respond, you can make an application to the magistrate's court. This can be done by completing the 'Application for Court Order' (Form 12).

Prescribed Form 12 can be found at:

https://www.magistratescourt.wa.gov.au/files/RT_Form_12_Court_Order.pdf

4. If the landlord continues to fail to repair the damage within a reasonable time, a rent reduction can be sought.

Importantly, do not withhold rent payments as this will be in breach of the residential tenancy agreement.

Urgent Repairs

There are two (2) categories of urgent repairs:

1. Essential services such as water, electricity, gas, etc.
2. Other repairs that are necessary to avoid the property being exposed to damage, cause a person to be at risk or cause of potential injury or causing hardship to the tenant.

If the repair is urgent, contact the landlord as soon as possible, or if it is after hours, contact the after-hours number. If the landlord does not respond within 24 hours for an urgent repair of essential services, you can authorise an essential repair. You can authorise any other urgent repair if the landlord does not respond within 48 hours.

Tenant Right to Privacy

As a tenant, you have a right to privacy of the property. The landlord, or anyone else, is not allowed to enter the property unless you have been given correct notice prior to their arrival (see below).

When can a Landlord Enter the Tenant Property?

The landlord can enter the property in the following circumstances.

Purpose	When the Landlord can Enter the Premises
In an Emergency	Anytime.
Conducting Routine Inspections	At a reasonable time after giving the Tenant a minimum of seven (7) days' written notice.
Landlord suspects the Tenant has abandoned the property	Twenty-four (24) hours after giving the Tenant written notice.
Necessary Maintenance and Repairs	Seventy-two (72) hours after giving the Tenant written notice.

Purpose	When the Landlord can Enter the Premises
To show the property to prospective Tenants	Can only occur in the final twenty-one (21) days of the residential tenancy agreement. At a reasonable time after giving the Tenant written notice.
To show the property to prospective Buyers	At a reasonable time after giving the Tenant written notice.

A written notice must state the proposed date of entry and whether the entry will be prior to, or after 12:00pm.

The landlord must make reasonable attempts to discuss a day and time of entry that suits you.

What can a Tenant do if the Landlord does not Respect Tenant Privacy?

If the landlord enters the premises without notice you can:

1. Write to the landlord and inform them that tenant privacy has been breached, requesting written notice to access the property be given in the future.
2. Apply to the Magistrate's Court for an order to stop the landlord from entering your property.
3. Report the landlord to the police for trespassing.

How to end a Residential Tenancy Agreement

Periodic Tenancy

A periodic tenancy agreement has no fixed end date. To end a periodic tenancy agreement, you must give the landlord twenty-one (21) days' written notice.

Fixed Term Tenancy

A fixed term tenancy agreement has a fixed end date. The fixed term tenancy agreement will come to an end at the date decided on when signing the agreement. However, the landlord must give you thirty (30) days' written notice of the end of the tenancy. If the landlord does not give notice, the tenancy agreement will automatically convert to a periodic tenancy agreement at the end of the fixed term.

Breaking a Residential Tenancy Agreement

Breaking a residential tenancy agreement before the set end date for a fixed term agreement or without giving twenty-one (21) days' notice for a periodic tenancy agreement is a breach of the residential tenancy agreement and you may be held liable to pay compensation to the landlord.

Can the tenant break a Residential Tenancy Agreement if the landlord is breaching the Agreement?

You can seek an order from the Magistrates Court to end a fixed-term agreement if the lessor has not kept to any one of the terms in the agreement and refuses to fix the problem. You can end the agreement with two (2) days' notice if the premises is destroyed, compulsorily acquired by law, or becomes uninhabitable. You can also end the tenancy by mutual agreement.

Facing Hardship?

If staying in the residential tenancy agreement will result in your facing undue hardship you may be able to apply to the Magistrates Court to terminate the lease.

Undue hardship may apply to you if you are facing serious medical or safety issues. However, you may still be ordered to pay some compensation.

Before applying to the Magistrates Court, we recommend you talk to your landlord about the issues you are facing, and you may reach a mutual agreement to terminate the residential tenancy agreement.

Eviction

Periodic Tenancy Agreement

Landlords can issue a **no grounds termination**. They are not required to provide a reason for terminating the periodic tenancy agreement. However, they must provide you with sixty (60) days' written notice.

Fixed Term Lease Agreement

Landlords must provide thirty (30) days' notice of termination in writing prior to the end date of the residential tenancy agreement.

However, if the landlord ends the tenancy early without consent you may be able to claim compensation for any reasonable losses you suffer such as inconvenience and removalist costs.

Breach of Agreement

If you breach the residential tenancy agreement the landlord can give you a **Breach Notice** that outlines the problems and gives you fourteen (14) days to fix the problem.

If you fail to fix the problem, the landlord can issue a **Notice of Termination** which gives you seven (7) days to leave the property.

If you fail to vacate, the landlord can apply to the Magistrates Court to end the tenancy and seek an order for possession.

At a court hearing, you may show that you have fixed the breach or taken steps to do so, in which case the court may decide to not end the residential tenancy agreement.

If the Magistrates Court makes an order to terminate the residential tenancy agreement, you may be able to ask the court to suspend the order for thirty (30) days by showing that you will suffer hardship by the termination.

Retaliatory Eviction

If the landlord attempts to end a residential tenancy agreement after you have enforced your legal rights, such as requesting a repair, this may be deemed retaliatory eviction. In this case, the court can declare a Notice of Termination given to you by the landlord to be invalid.

If you suspect that your landlord is evicting you in retaliation for your exercising your legal rights, contact Circle Green Community Legal Centre (previously Tenancy WA) on 08 6148 3636.



Recovering your Rental Bond

To maximise your chances of receiving your Bond back, you should:

- Go through the Property Condition Report carefully at the beginning of the tenancy and note any issues on it
- Take photos of the property at the beginning and end of the tenancy
- Read all documents carefully
- Repair and maintain the premises during your occupation and report issues to the landlord as they arise
- Keep copies of all rent receipts
- Leave the property clean and in the same condition as when you moved into the property (including the garden)
- Keep receipts if you paid for cleaning, gardening or repairs, etc.
- Provide a forwarding address to the landlord

The Rental Bond should be returned to you unless:

- You owe money for outstanding rent payments
- You are responsible for property damage
- You have outstanding utility bills, e.g., water, electricity, etc.

What if the rental bond is withheld from you?

You may need to apply to the Magistrate's Court if:

- You cannot get your rental bond money back
- You have not been able to reach an agreement with the landlord about how much bond you should get back

You can make an 'Application for Disposal of Bond Money' (Form 6) to the Magistrates Court.

Prescribed Form 6 can be found at:

https://www.magistratescourt.wa.gov.au/files/RT_Form_6_Bond_Money.pdf

Is the tenant responsible for wear and tear of the property?

You are responsible for negligent damage. However, a property is likely to suffer fair wear and tear over time, for which you are not responsible.

Fair wear and tear, refers to deterioration caused by ordinary use.

Fair Wear and Tear to Rental Property	Negligent Damage to Rental Property
Cracking windowpanes due to old window frames.	Cracked window due to tenant slamming the window shut.
Curtains fading from sun exposure.	Curtains torn by tenant pet/s.
Paint fading over time.	Paint discoloration from candle smoke.
Worn carpets from ordinary use.	Scratches on kitchen benchtops due to cutting food or scratches on wood floors due to dragging furniture

If your landlord is holding you responsible for damage that is fair wear and tear, you should refer to the **Property Condition Report** and photographs to compare the condition of the property when you first moved into the property.

Tenant Advice and Advocacy Services

For more information, or assistance tailored to your specific situation please contact the services listed below:

Circle Green Community Legal Centre (previously Tenancy WA) provides state-wide telephone advice services and referrals.

Metro T: 08 6148 3636

W: <https://circlegreen.org.au/tenancy/>

Department of Commerce

T: 1300 304 054

W: <https://www.commerce.wa.gov.au/>

Metropolitan Community Legal Centres
Fremantle Community Legal Centre Level 1, Suite 31 Fremantle Mall, 35 William St, Fremantle WA 6160 T: 08 9432 9790 W: http://www.fremantle.wa.gov.au/fclc
Gosnells Community Legal Centre Gosnells Community Lotteries House, Suite 1 2232 Albany Hwy Gosnells WA 6110 T: 08 9398 1455 W: http://www.goscllc.com.au
Midland Information Debt & Legal Advocacy Service 8-12 Stafford St, Midland WA 6056T: 08 9250 2123 W: http://www.midlas.org.au
Northern Suburbs Community Legal Centre (Joondalup) Building 1, Edith Cowan University, 270 Joondalup Drive Joondalup WA 6027 T: 08 9440 1663 W: http://www.nsclegal.org.au/
Northern Suburbs Community Legal Centre (Mirrabooka) 10 Cobbler Place Mirrabooka WA 6061 T: 08 9440 1663 W: http://www.nsclegal.org.au/
Southern Communities Advocacy & Legal Education Services (SCALES) Suite 3 St Nicholas Community Centre, 14 Council Ave Rockingham WA 6168 T: 08 9550 0400 W: http://www.murdoch.edu.au/School-of-Law/Clinical-Legal-Education-SCALES
Subiaco Justice Centre Inc. 325 Barker Road Subiaco WA 6008 T: 08 6500 0227 W: https://subiaco.legal/
Sussex Street Community Law Service Inc. 29 Sussex Street East Victoria Park WA 6008 T: 08 6253 9500 W: http://www.sscls.asn.au/
Welfare Rights & Advocacy Service 98 Edward Street Perth WA 6000 T: 08 9328 1751 W: http://www.wraswa.org.au/

Regional Community Legal Centres

Albany Community Legal Centre

4/15 Peels Place Albany WA 6330

T: 08 9842 8566

W: <http://www.albanyclc.com.au>

South West Community Legal Centre

14 Plaza Street South Bunbury WA 6230

T: 08 9791 3206 | 1800 999 727 (Free Call)

W: <http://https://www.swclc.org.au/>

Regional Alliance West

1/114 Sanford Street Geraldton WA 6530

T: 08 9938 0600

W: <https://raw.org.au/>

Goldfields Community Legal Centre

Suite 4-6/37 Brookman St, Kalgoorlie WA 6430

T: 08 9021 1888 | 1300 139 188 (if outside Kalgoorlie-Boulder)

Kimberley Community Legal Services

4 Papuana Street Kununurra WA 6743

T: 08 9169 3100

W: <http://www.kcls.org.au/>

Peel Community Legal Services

61B Pinjarra Road Mandurah WA 6210

T: 08 9581 4511

W: <http://www.peelcls.com.au/>

Pilbara Community Legal Service (Karratha)

Karratha Business Centre, Unit 52-54 5/15 Sharpe Ave, Karratha WA 6714

T: 08 9185 5899

W: <http://www.pcls.net.au/>

Regional Community Legal Centres (continued)

Pilbara Community Legal Service (Newman)

Newman House, 4/46 Iron Ore Parade Newman WA 6753

T: 08 9175 0148

W: <http://www.pcls.net.au/>

Pilbara Community Legal Service (Roebourne)

2 Padbury Street Roebourne WA 6718

T: 08 9185 5899

W: <http://www.pcls.net.au/>

Pilbara Community Legal Service (South Hedland)

South Hedland Lotteries House, 9/2 Leake Street South Hedland WA 6722

T: 08 9140 1613

W: <http://www.pcls.net.au/>

Wheatbelt Community Legal Services

327 Fitzgerald Street E Northam WA 6401

T: 08 9622 5200

W: <http://www.wheatbelt.com.au/>



Strata Titles and Community Titles

A strata title is a form of ownership for a lot and a share in the common property in a strata scheme.

Strata titled properties are a good choice for those who prefer small and easily maintained properties that are often close to well established facilities (e.g. villas, units, apartments). It is a form of community-based living. Community title is another form of ownership similar to strata titles, but it has only recently been introduced and is therefore not currently common in Western Australia.

Strata titled properties are governed by the *Strata Titles Act 1985* which provides information on:

- Rights and obligations of owners
- Insurance issues
- Renovation or additions to the property
- Standard by-laws

The *Act* dictates what you own and what is 'Common Property' shared by all of the strata owners. Common Property can include a courtyard, lift, swimming pool, etc.

Strata-Titled Properties

Ensure you are familiar with all aspects of strata titles if you are contemplating purchasing such a property.

Duties and Responsibilities of the Strata Title Owner

If you own a strata titled property, it is important you are aware of your owner responsibilities.

You have several duties, including:

- Becoming a member of the strata company entitling you to a vote in respect of its management
- Abiding by the by-laws of the strata scheme (i.e. the strata rules)
- Paying strata levies such as for insurance, repair and maintenance of common property and possibly a reserve fund for capital expenditure
- Attending meetings to discuss issues and vote on issues pertaining to expenses, improvement repairs and management of the complex

What are Scheme By-laws?

By-laws are the 'rules' and define what you can and cannot do in the strata scheme. Standard by-laws are in the Act. However, a strata scheme may have different or special by-laws contained in a management statement. You can obtain a copy of the management statement from the strata company or strata manager.

What do I own?

You own your lot and a share in the common property. In a multi-tier strata scheme (e.g. high-rise apartment complex or two storey building with lots on the first and second floor) you do not own the external walls as that is common property.

What obligations apply to people who are on Common Property?

Refer to the By-laws for initial guidance. If you are still unsure, raise the matter at a strata company meeting or ask the strata manager.

Can an owner participate in decisions about how the Strata Scheme operates?

Yes, as a member of the strata company an owner can participate in meetings and vote on the issues affecting the scheme by-laws. You will automatically become a member of the strata company when you buy your lot. Your vote will be weighted according to the unit entitlement of your lot in the strata scheme (i.e. everyone's vote may not be equal).

What if an owner has an issue with another lot owner or the Strata Company?

Some actions an owner can take include:

- Consulting the strata scheme by-laws
- Raising the issue with the strata manager or other owners who are officers of the strata company (Strata Council).
- Applying to the State Administrative Tribunal

What if an owner has an issue with the Strata Manager?

Raise the issue with the Strata Council at a strata company meeting so the council can take up the matter with the Strata Manager.

If the issue remains unresolved, the strata company can take steps to try and settle the dispute.

Information the Strata Title property buyer must be given

When you are buying a strata titled property the seller must give you a 'Pre-Contractual Disclosure Statement to the Buyer' which includes:

- A copy of the Strata Plan which shows the Strata Lot being sold and its unit entitlement
- A copy of the Standard and any Non-Standard By-laws (which may be in a document entitled 'Management Statement') and which will include any exclusive use by-laws
- The strata levies you must pay
- Details of any debt owed by the seller to the strata company
- Minutes of the most recent annual general meeting of the strata company and any extraordinary general meetings and the latest statement of accounts
- Larger strata schemes (6 lots or more) employ a strata manager to keep records on behalf of the strata company. For more information, you can ask the strata manager
- Owners in smaller strata schemes may find it difficult to access information as minutes of meetings may not need to be kept or may be held by other owners



Where to Access More Information

Landgate

For general strata inquiries:

T: 08 9273 7373

Regional Australia T: 1300 365 288

E: customerservice@landgate.wa.gov.au

W: <https://www0.landgate.wa.gov.au/>

Legal information and Advice

Law Society of WA

T: 08 9324 8600

W: <https://lawsocietywa.asn.au/>

Strata Community Association

T: 08 9381 7084

Note: this number cannot be called for general strata advice.

W: <https://www.wa.strata.community/>

The Citizens Advice Bureau of WA

T: 08 9221 5711

W: <https://cabwa.com.au/>

Retirement Villages

A retirement village is a community of seniors who live in individual premises and share common facilities and amenities. The villages are managed and administered by a village operator and may be run by commercial companies, local government or non-profit organisations.

Moving into a retirement village is a major financial decision so it is extremely important to take the time to be aware of your legal rights and obligations before entering into a contract.

Legal rights and obligations for contracting to reside in a retirement village can be found in the:

- *Retirement Villages Act 1992*
- *Retirement Villages Regulations 1992*
- *Fair Trading (Retirement Villages Code) Regulations 2022*

What to do prior to signing a Contract to reside in a Retirement Village

Before moving into a village, the buyer will be given a lengthy contract.

It is important to be aware that contracts are legally binding documents, and it is vital you understand the information provided to you prior to signing any contract.

It is highly recommended the buyer engages a lawyer to provide advice regarding the contract and to highlight any potential costs and terms and conditions of the contract. Before signing a contract, make sure you are familiar with the information provided at the end of this Section of this Guide.



Information the retirement village property buyer must be given

The administering body of the retirement village must provide you with:

- The Code of Practice for Retirement Villages
- A copy of the final contract
- A copy of the residents' rules of the village
- A pre-contractual statement with accurate information about matters including fees and charges payable (contained in Schedule 1 of the Retirement Villages Regulations 1992)
- A notice that informs you about your rights
- A list of commonly asked questions with answers
- Details regarding:
 - All costs payable
 - All ongoing charges and fees and methods of variation for all charges and fees
 - Optional services provided
 - Costs associated with moving into the village
 - The refund entitlement for buyer regarding termination of the contract
 - Rules of the village such as those relating to parking, gardening, pets, visitors, etc.

Additionally, the retirement village administering body is required to answer any questions from the buyer relating to the village.

The administering body of the retirement village must disclose the above information at least ten (10) working days before you sign the contract.

What if you change your mind after signing a contract of sale?

After the last person signs the contract, there is a seven (7) working day cooling-off period. The contract will only be binding following the seven (7) working day cooling-off period. During this period, you can change your mind without incurring any associated costs but if you decide not to go ahead with the contract, you must give **notice in writing** to all other parties of the contract.

What are the costs associated with the signing of the contract of sale?

The costs associated with entering a retirement village contract can include:

- An entry price also known as a 'premium' which is a one-off, up-front payment
- Recurrent charges which are often monthly payments that the resident pays while living at the village, covering operating costs and services of common areas and amenities
- Departure fees which are charged when the resident exits the village. These fees can be high which is why it is important to read and understand the contract

Other fees: The resident of the village (or their estate) may have to continue to pay fees after the resident leaves the village, while the operator finds another buyer to take over the lease or to buy the retirement village property. It is important that you consider these potential costs when you enter into a retirement village contract.

What are the legal rights of a spouse or partner in the contract of sale?

The buyer of a retirement village property must ensure the names of all parties, spouse, partner, etc. are included on any title or lease.

Failure to do so may result in the other parties to the contract being required to move out if the buyer of the retirement village property passes away or moves into a residential aged care facility.

What 'matters' must and must not be included in a contract of sale?

Matters that **must** be included in a contract of sale:

- An undertaking that any communal amenity (e.g., swimming pool) cannot be removed or changed unless the residents consent
- A warranty that the residential premises will be in a reasonable condition when the resident takes possession
- A provision that the resident may apply to the administering body for approval to add or remove a fixture and the administering body of the retirement village must not unreasonably withhold approval of the alteration
- Provision for the resident to arrange for urgent repairs at the cost of the retirement village

Matters that **must not** be included in a contract of sale:

- Provisions that require a resident to give a Power of Attorney to another person, except under very limited circumstances
- Provisions which do not calculate exit fees on a daily pro rata basis
- Provisions that allow the contract to be varied without consent
- Provisions which require a resident to contribute to the costs for maintenance or renovation that would exceed what is reasonable

What are the general rights of the Retirement Village resident?

The code of practice supplements the *Retirement Villages Act 1992*. The objective of the code is to promote fairness and respect of mutual rights.

To view the *Retirement Villages Act 1992* go to:

https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a697.html

To view the Code of Practice go to:

https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s53502.html

Listed below are some of the important clauses in the Code to be aware of:

Schedule 1 Division 1 Clause 3:

- The well-being and interests of residents and the rights of administering bodies must be given due consideration
- Residents must be treated fairly and must not be subject to abuse or exploitation

Schedule 1 Division 1 Clause 5 provides residents with the right to:

- Privacy
- Quiet enjoyment of the premises and communal amenities
- Complete autonomy over the resident's property and personal and financial affairs

What are the resolution rights of the Retirement Village resident in the case of disputes?

The *Retirement Villages Act 1992* includes an important dispute resolution process.

Dispute Resolution Process Steps

Step 1

Approach the other persons and/or parties to the dispute to try to resolve the issue amicably.

Step 2

If Step 1 is unsuccessful, a resident can invoke an **In-Village Dispute Resolution** process. The code of practice which contains the rights and responsibilities of residents and administering bodies outlines this process in Division 6.

The administering body of the village will nominate a suitable person or body to deal with the dispute who is acceptable to all parties.

The Dispute Resolution process is as follows:

1. The complainant must give notice in writing to the other party stating the matters in dispute and calling on them to settle these matters.
2. The other party must respond within ten (10) working days of receipt of the written notice and give reasons in writing if they reject any of the dispute matters.
3. The parties and the person appointed to deal with the dispute will then meet within twenty (20) working days of the written notice.
4. If the matter is not resolved by this process, the administering body must advise the parties of available avenues for further review of the matters that are still in dispute.

Breaches of the code of practice by the administering body

If there is a breach of the code by the retirement village administering body, a formal complaint can be lodged with the Consumer Protection Division of the Department of Mines, Industrial Relation and Safety (DMIRS).

The complaint can be lodged online or the applicable form can be downloaded from the DMIRS Website at:

<https://forms.commerce.wa.gov.au/consumer-protection/complaint>

Where to Access More Information or Assistance

For advice about your rights under the *Retirement Villages Act 1992* and the Code of Practice for Retirement Villages.

Department of Mines, Industry Regulation and Safety (DMIRS)

T: 1300 304 054 (Local call costs apply)

National Relay Service

T: 133 677 (for the hearing impaired)

W: www.dmirs.wa.gov.au

E: consumer@dmirs.wa.gov.au

Copies of the Act, Regulations and code can be obtained from the State Law Publisher.

T: 08 6552 6000

W: www.legislation.wa.gov.au

For details about the information and services available for seniors.

Seniors Information Service

T: 08 6551 8800

Country callers: 1800 671 233

Carer Gateway

T: 1800 422 737

For information about retirement villages which are members of the Retirement Living Council of the Property Council.

Retirement Living Council

T: + 61 7 3225 3000

For information about retirement village accommodation provided by members of Aged & Community Care Providers Association (ACCPA).

T: 1300 222 721

For information about the availability of retirement villages in a certain locality, call your Local Council.

Longstay Tenure in Residential Parks

Residential Parks are governed under the *Residential Parks (Long Stay Tenants) Act 2006* (*Residential Parks (Long Stay Tenants) Act*) and *Residential Parks (Long Stay Tenants) Regulations 2007* (*Residential Parks (Long Stay Tenants) Regulations*). They are not governed by the *Retirement Villages Act 1992*.

In Western Australia selected caravan parks provide sites for rent on which a caravan or park home can be placed. Tenants who intend to stay at a park for longer than three (3) months need to ensure their site is classified as a 'long-stay' site which can be occupied for three (3) months or longer.

Purpose of the *Residential Parks (Long Stay Tenants) Act*: To regulate the tenancy agreement between the park operator and you and to balance both tenants' and park operator's interests.

Application: Applies to tenancy agreements within a long-stay residential park that are for a fixed term of three (3) months or more or periodic agreement that continues for three (3) months or more. Does not apply to agreements entered into for the purpose of a holiday or which confer a right to occupy a site for an employer or agent of the park operator.

It is important to bear in mind that a 'lifestyle village' may include both long-stay sites and retirement village homes, with different rules applying to the different types of homes.

Changes to the Residential Parks (Long Stay Tenants) Act

Changes to the *Residential Parks (Long Stay Tenants) Act* and *Residential Parks (Long Stay Tenants) Regulations* commenced on 31 January 2022. The changes were introduced to improve the security of long-stay tenancy agreements and promote fair and transparent arrangements between park operators and tenants.

Details regarding the changes can be reviewed at:

<https://www.commerce.wa.gov.au/consumer-protection/changes-residential-parks-long-stay-tenants-act-2006>

A short summary of the changes can also be found at:

<https://www.commerce.wa.gov.au/consumer-protection/changes-residential-parks-long-stay-tenants-act-2006>

The *Residential Parks (Long Stay Tenants) Act* requires among other things that:

- All agreements are in writing
- Park operators provide disclosure material to assist prospective long-stay tenants in deciding if park living is suitable for their needs
- A minimum five (5) working days' cooling off period applies to site-only agreements
- A minimum of one hundred eighty (180) days' notice must be given for a park operator to terminate a periodic 'site only' tenancy agreement
- A minimum sixty (60) days' notice must be given for a park operator to terminate a periodic 'on-site' home agreement
- Parks with a minimum of twenty (20) long-stay sites must establish a park liaison committee
- Compensation must be paid if a fixed-term agreement is terminated early for reasons other than a breach of agreement
- The State Administrative Tribunal determines disputes between parties

What to do before signing a Tenancy Agreement when renting a site and/or a dwelling in a residential park

Before signing a long-stay tenancy agreement to live in a park, be aware that even if you own the caravan or park home that you reside in, you are only renting the site on which it is located. In some instances, you may also be purchasing the relocatable home in addition to renting the site so you need to carefully consider what you are paying for under the tenancy agreement.

You do not have ownership related rights over the greater land in the park where your park home or caravan is located.

You should also be aware that park living may not be a permanent living arrangement as the park owner may decide to sell, in which case you may be required to move the relocatable home to another location.

What type of Tenancy Agreement can be offered to live in a residential park?

Fixed Term Agreement

A Fixed Term Agreement specifies a period of time that you can rent the premises or the site. The period of time can be any length of time provided that it is 3 years or more.

Periodic Agreement

A Periodic Agreement does not specify the period of time you can rent the premises or the site. Either the Park operator or you can give notice to leave in accordance with requirements under the *Residential Parks (Long Stay Tenants) Act*.

With either a fixed term or periodic agreement, there are restrictions on the alterations or additions you can make to your park site or to your caravan and/or park home.

What are the parties rights and obligations in respect of Residential Park Living?

Tenants' Rights and Obligations	
Right or Obligation	Description
Vacant Possession	Vacant possession of the premises to be given on commencement of long-stay agreement.
Responsibility for cleanliness	You must keep the premises clean.
Responsibility for damage	You must not intentionally or negligently cause any damage and must notify the park operator of any damage.
The conduct of tenants when on Park premises	You must not cause or permit a nuisance or use the premises for illegal purposes.
Tenants' vicarious responsibility for Breach of Agreement	You are responsible for acts or conduct of guests.

Park Operator Rights and Obligations	
Right or obligation	Description
Responsibility for cleanliness and repairs	The Park operator must provide and maintain the park in a reasonable state of cleanliness and repair. They must also comply with health and safety laws.
Compensation where tenant seeks to repair	The Park operator must compensate you for reasonable expenses incurred in making urgent repairs.
Locks	The Park operator must provide locks for on-site homes. There can be no change or removal of any locks without consent and notification to you.

Right or obligation	Description
Right of Entry for Park Operator	The Park operator may enter premises with consent and/or in an emergency for inspection and maintenance.
All rates, taxes and charges are paid by the Park Operator	The Park operator will bear the costs of all rates, taxes and water charges.

What must be provided to the prospective Tenant prior to signing an Agreement to reside in a Residential Park?

Before moving into a Residential Park, the Park Operator must provide to the Tenant:

- A copy of the proposed agreement, including an explanation of how and when the rent may be varied; all long-stay agreements must be in a standard form as described in the *Residential Parks (Long Stay Tenants) Act* and Residential Parks (Long Stay Tenants) Regulations
- A copy of the information booklet on park living prepared by the Commissioner (this sets out key information about a person's rights and obligations under the *Residential Parks (Long Stay Tenants) Act*)
- A written schedule of fees and charges currently payable by a long-stay tenant to the park operator
- A property condition report
- A copy of the Park rules
- Information about the membership and functions of the Park Liaison Committee (if any)
- A copy of the prescribed information sheet (which sets out specific information in relation to your particular long-stay agreement)
- Particulars of any restrictions or conditions imposed directly or indirectly under a written law that could affect:
 - The sale of the prospective tenant's relocatable home on site
 - Any proposed assignment of the prospective tenant's rights under the long-stay agreement

It is important to be aware that contracts are legally binding documents, and it is vital you understand the information provided by the Park operator prior to signing any contract.

What are the termination grounds for of the Residential Park Agreement?

The long-stay agreement may be terminated on the following grounds:

- Non-payment of rent
- Using the premises for an illegal purpose
- Damage to property
- Violent behaviour
- A breach of a term of the long-stay agreement

What is 'Termination without Grounds' of the Residential Park Agreement?

The *Residential Parks (Long Stay Tenants) Act* also provides that party to a long-stay agreement may give a notice of termination to the other to terminate a periodic long-stay agreement without grounds before the end of the term.

The notice of termination by you must be given at least twenty-one (21) days before vacating.

The notice of termination by a park operator must not require vacant possession before sixty (60) days have passed for renters or one hundred eighty (180) days for homeowners. If the agreement is for a fixed term, the notice cannot require possession before the end of the fixed term.

Some safeguards do exist for tenants in relation to termination without grounds. A notice of termination without grounds must be justified and park operators cannot terminate on a mere whim.

Tenants on fixed term agreements cannot end the agreement before the end of the term.



Where to Access More Information or Assistance

The information in this section may be out of date as the Western Australian Government implements law reform and policy changes. For current information, visit the following websites that have additional materials and fact sheets.

Seniors Housing Advisory Centre

T: 1300 367 057

Park Living Information Booklet

W: www.dmirs.wa.gov.au/consumer-protection

Park Home Owners Association WA

W: <https://www.parkhomeownerswa.com.au/>

Government of Western Australia

Department of Mines, Industry Regulation and Safety Consumer Protection

Contact Centre 1300 304 054 (for the cost of a local call state-wide) 8.30am-4.30pm Monday to Friday

A: Gordon Stephenson House Level 2/140 William Street Perth WA 6000

W: <https://www.commerce.wa.gov.au>

E: consumer@dmirs.wa.gov.au

P: Locked Bag 100 East Perth WA 6892

Regional Offices

Goldfields/Esperance T: 08 9021 9494

Great Southern T: 08 9842 8366

Kimberley T: 08 9191 8400

Mid-West T: 08 9920 9800

North-West T: 08 9185 0900

South-West T: 08 9722 288

Residential Aged Care

Residential Aged Care is provided for people who are not able to live independently and safely in an independent residence and who require ongoing help with everyday tasks or health care.

There are other forms of care that enable you to stay in your home (e.g. home care, flexible care and short-term restorative care).

Residential Aged Care is governed under the *Aged Care Act 1997 (Cth)*.

The *Aged Care Act 1997 (Cth)* is the overarching legislation that outlines the obligations and responsibilities that aged care providers must follow to receive subsidies from the Australian Government. Aged care is the responsibility of the Australian Government, not the Western Australian Government.

The *Aged Care Act 1997 (Cth)* sets out rules for issues like funding, regulation, approval of providers, quality of care and the rights of people receiving care. Laws on diversity and discrimination, including elder abuse, also apply to aged care. There have been and will be significant legal and policy changes to the aged care sector following recommendations of the Royal Commission into Aged Care Quality and Safety published in March 2021. These changes include that the *Aged Care Act 1997* will be replaced by a new *Act*. This is expected to come into force in late 2023.

The information in this section on Residential Aged Care may be out of date as the Australian Government implements law reform and policy changes. For current information, visit the following websites that have excellent materials and fact sheets:

- [Aged Care Quality and Safety Commission](#)

The Commission regulates aged care services and safeguards the welfare and rights of consumers. It also resolves complaints about services.

T: 1800 951 822

W: <https://www.agedcarequality.gov.au/>

- [MyAgedCare](#)

This is the government's comprehensive service which details the types of services available and the procedures required to access the services.

T: 1800 200 422

W: <https://www.myagedcare.gov.au/>

Eligibility to receive Residential Aged Care

You are eligible to receive residential care if you have physical, medical, social or psychological needs that require the provision of care and those needs can be met appropriately through residential care services.

Eligibility for a subsidised place is based on need, determined through an assessment.

To be eligible, you must be unable to live independently at home and can be either:

- An older person
- A younger person with a disability, dementia or other special care needs not met through other specialist services

Your financial situation does not affect your eligibility to live in a government-subsidised aged care home. It will impact the amount you may have to pay.

To qualify for assessment, you must meet some needs and age requirements. You can quickly find out if you meet the requirements for an assessment by using the eligibility checker on the MyAgedCare website or, if you are ready to get assessed, you can apply online on the MyAgedCare website for an assessment straight away. A trained assessor will visit you at home to carry out an assessment. They will talk to you about your circumstances and needs and work with you to identify what services might suit you best.

The Charter of Aged Care Rights

The Charter of Aged Care Rights describes your rights as a consumer of Government funded aged care services.

The Charter of Aged Care Rights is made under the *Aged Care Act 1997* and can be found at:

W: <https://www.agedcarequality.gov.au/consumers/consumer-rights#charter-of-aged-care-rights>

Under this charter you have the right to:

1. Safe and high-quality care and services.
2. Be treated with dignity and respect.
3. Have your identity, culture and diversity valued and supported.
4. Live without abuse and neglect.
5. Be informed about your care and services in a way you understand.

6. Access all information about yourself, including information about your rights, care and services.
7. Have control over and make choices about your care, and personal and social life, including where the choices involve personal risk.
8. Have control over, and make decisions about, the personal aspects of your daily life, financial affairs and possessions.
9. Your independence.
10. Be listened to and understood.
11. Have a person of your choice, including an aged care advocate, support you or speak on your behalf.
12. Complain free from reprisal, and to have your complaints dealt with fairly and promptly.
13. Personal privacy and to have your personal information protected.
14. Exercise your rights without it adversely affecting the way you are treated.

‘Duty of Care’ in aged care relates to the responsibility not to cause harm or injury to another person that could be reasonably foreseen. In an aged care setting, this requires capable staff, safe premises and quality clinical care.

Approved providers must protect the care recipient's privacy and comply with all applicable laws relating to the use of personal information and implement security safeguards to protect care recipients' personal information against loss or misuse.

Code of Conduct

From 1 December 2022, a National Code of Conduct was introduced in aged care services to improve safety and wellbeing for aged care residents.

The Code applies to:

- Approved providers
- Their governing persons (e.g. CEO, Board members)
- Aged Care Workers

The Code will describe how aged care providers and the workers (i.e. the people who provide your care) must behave and treat aged care residents. Aged care residents should always be treated well and feel safe. Aged care providers and the people who provide care must act in a way that is respectful, kind and consistent with the behaviours set out in the Code.

If you are concerned about the way your aged care provider or the people providing your care are behaving:

- You can raise your concern, give feedback or make a complaint to your aged care provider
- If you feel uncomfortable speaking up or you would like some support, you could ask a friend or family member to help you raise a concern directly with the provider or you can get help from an independent advocate, at no cost; you can call the Older Person Advocacy Network (OPAN) on 1800 700 600 to be connected to a local, independent advocate who can help you to raise your issue with your provider
- If you are not comfortable raising a concern directly with your provider or are not happy with their response, you can contact the Aged Care Quality and Safety Commission for information and to work with you and your provider to resolve the concern; the Commission has a range of compliance and enforcement actions to respond to different situations

Other Rights when you are receiving Aged Care Services

When you are receiving aged care services, you have the **same legal rights as all Australians**.

For example, you have rights to privacy, consumer rights and the right to be free from discrimination under relevant laws.

For more information on your rights, other than talking to your aged care provider, contact:

- Older Persons Advocacy Network (OPAN)

This is a network of independent not for profit organisations which provides advice and support to older people about their aged care rights.

T: 1800 700 600

W: <https://opan.org.au/support/support-for-older-people/your-aged-care-rights/>

- Department of Health

This website can be a starting point for all information about aged care including types of government-funded services.

W: <https://www.health.gov.au/health-topics/aged-care>

- Aged Care Quality and Safety Commission

The Commission regulates aged care services and safeguards the welfare and rights of consumers. It also resolves complaints about services.

T: 1800 951 822

W: <https://www.agedcarequality.gov.au/>

- MyAgedCare

This is the government's comprehensive service which details the types of services available and the procedures required to access the services.

T: 1800 200 422

W: <https://www.myagedcare.gov.au/>

- Services Australia (previously known as Department of Human Services)

This Government Department provides information about payments and services for people retiring or accessing aged care, including carers.

T: 1800 227 475

W: <https://www.servicesaustralia.gov.au/>



What are the costs involved for Aged Care?

Aged care facilities may be run by commercial companies or non-profit organisations. Most aged care services receive funding from the Australian Government. However, residents are required to pay some fees and charges.

If you are moving into an aged care home, you may have to pay a means tested care fee and accommodation costs. A means assessment determines if you need to pay the means tested care fee and if the Australian Government will contribute to your accommodation costs. Everyone who moves into an aged care home negotiates a room price before moving in. The means assessment determines if you will have to pay the agreed room price.

The following information relates to aged care fees and costs after 1 July 2014. On that date the way fees were worked out for aged care homes changed. If you moved into an aged care home before 1 July 2014, the below fee arrangements that started on 1 July 2014 do not apply to you. You keep paying the fees that you were already paying before 1 July 2014.

Basic Daily Fee

Everyone pays the basic daily fee. This fee is for day-to-day services (e.g. meals, cleaning, and laundry and facilities management). The basic daily fee is set at 85% of the single person rate of the basic age pension.

Means-Tested Care Fee

The means tested care fee is an extra contribution that some people pay, as determined through a means assessment. It is an ongoing fee towards the cost of your personal and clinical care. This fee is different for everyone and not everyone has to pay it.

The means tested care fee can change over time. But there are annual and lifetime caps that apply to the means tested care fee. Once you reach a cap, you cannot be asked to pay any more in means tested care fees.

Refundable Accommodation Deposit (RAD)

Most providers require a Refundable Accommodation Deposit (RAD). This is like a no-interest loan to an aged care home and is refundable (less deductions) when you leave. These fees vary as does the amount you pay, which is dependent on your assets.

Extra Service Fees

For the provision of additional services outside the basic service such as specialised menus.

Supported Residents

If you are unable to pay the fees and charges there are hardship provisions that may reduce the costs. In calculating your fees, your income and assets will be assessed.

Most aged care providers have rooms available for 'supported residents'. No person is excluded from residential aged care. Provisions are made for people with few or limited assets. Aged care is available to everyone regardless of their assets.

Accommodation Costs

Everyone entering an aged care home needs to agree on a room price in writing with their provider before entering care. Whether or not you need to pay the agreed amount will depend on your means assessment.

Whether you are eligible for government assistance or not, there are different options for how to pay your accommodation costs in an aged care home. The three options are:

- Pay a refundable lump sum: this is called either a Refundable Accommodation Deposit (RAD) when you pay the full amount yourself, or a Refundable Accommodation Contribution (RAC) if you receive government assistance
- Rental-style daily payments: this is a daily accommodation charge which is called either a Daily Accommodation Payment (DAP) when you pay the full amount yourself, or a Daily Accommodation Contribution (DAC) if you receive government assistance
- A combination of the above: for example, for an agreed room price of \$400,000, you could choose to pay \$100,000 as a refundable lump sum, and pay a reduced non-refundable daily payment

In practice, most aged care providers require residents to pay a refundable lump sum in the form of a Refundable Accommodation Deposit (RAD). This is like a no-interest loan to an aged care home and the balance is refundable (less deductions to pay daily accommodation payments and other aged care costs) when you leave.

Additional Service Fees and Extra Service Fees

Some aged care homes offer a higher standard of additional or extra services (e.g. specialised menus, higher quality linen, particular room décor, pay TV or hairdressing service). These aged care homes can charge additional service fees or an extra service fee which they set and are not subsidised by the Australian Government. The resident pays the full costs.

Legal Agreements

When you enter aged care, there are two (2) or three (3) contracts that cover all the details. They may be separate documents or combined into one. They are:

- Resident Agreement: sets out the care and services the aged care home will provide and how much you will be asked to help pay for them. The resident agreement sets out the care costs, broken down into basic daily fees, means tested care fees (if applicable), fees for any additional services and how fees are calculated.

The Resident Agreement sets out your rights and responsibilities as a resident, and the aged care provider's obligations to you. It covers how the aged care home will continue to support you as your care needs change, when you can be asked to leave, how to exit the agreement, and how to move to another aged care home. It also covers the process for dealing with concerns and complaints.

- Accommodation Agreement: sets out what room you are taking, the room price you have agreed to pay and how you have agreed to pay it (e.g. refundable lump sum). The accommodation agreement also contains the requirements for refunding the lump-sum deposit and other accommodation conditions (e.g. room changes).
- Extra Services Agreement: only applies if the aged care home provides extra services, and you are entering an extra service room.

There is no standard or Australian Government-approved form for these agreements. Every aged care provider's documents will be different. They are binding contracts that together cover your right to live in a room in residential aged care, to use common amenities and to ancillary care services. Entering aged care can be a large personal and financial commitment. You should obtain specialist financial and legal advice in respect of your personal financial situation and the legal agreements of the relevant aged care home.



LOANS FROM AN INSTITUTION

Before entering an agreement to take out a loan for any purpose, ensure you read the following information.

What if you cannot pay back a loan or you have received an irresponsible loan?

If you have been given a loan that you are unable to repay, you may have a claim for compensation against the lender if there were particular circumstances in which the lender should have recognised that your loan was unsuitable for you at the time it was entered into.

The *National Consumer Credit Protection Act 2009* imposes responsible lending obligations on lenders. This requires them to assess whether a loan is unsuitable considering your requirements, objectives and financial situation.

To view the *National Consumer Credit Protection Act 2009*, go to:

<https://www.legislation.gov.au/Details/C2019C00053>

What must Lenders consider when assessing eligibility to service a Loan?

Lenders must consider if:

- The loan or credit limit increase meets customer requirements and objectives
- The customer can afford to repay the loan or credit limit increase without substantial hardship

If the person seeking a loan can only comply with the obligations under a loan contract by selling a major asset, e.g., the family home, it is likely that the loan will be considered unsuitable.

Lenders that allow an unsuitable loan to be given, can be ordered to pay compensation to the loan recipient if loss is suffered as a result.



What are the rights of the borrower when being assessed for eligibility to service a Loan?

The *National Consumer Credit Protection Act* requires lenders and brokers to offer credit only when the customer can meet the repayments without substantial hardship, without selling their home, and the proposed loan meets their requirements and objectives.

As a guide, the *National Consumer Credit Protection Act* will apply to individuals and strata corporations if:

- A charge is made for providing the credit, e.g., interest or fees
- The loan is predominantly for personal, domestic or household purposes
- The loan is for the refinance, purchase or improvement of a residential investment property (only for loans granted on or after 1 July 2010)

What is the purpose of the *National Consumer Credit Protection Act*?

The *National Consumer Credit Protection Act* replaces previous state-based consumer credit codes and the Uniform Consumer Credit Code (UCCC) and applies to the conduct of lenders and brokers, where the credit is provided wholly or predominantly: for personal, domestic or household purposes, or to purchase, renovate or improve residential property for investment purposes, or to refinance credit previously provided for this purpose.

For more information on the *National Consumer Credit Protection Act* go to:

<https://asic.gov.au/regulatory-resources/credit/credit-general-conduct-obligations/national-credit-code/#:~:text=The%20National%20Credit%20Act%20replaces,of%20Australian%20credit%20licence%20holders.&text=the%20credit%20is%20provided%20wholly,domestic%20or%20household%20purposes%2C%20or>

Under the *National Consumer Credit Protection Act*, a lender must:

- Make reasonable inquiries about the customer requirements and objectives in relation to the loan
- Make reasonable inquiries about the customer's financial situation
- Take reasonable steps to verify the customer's financial situation

What are the warning signs a lender may be in breach of responsible lending laws?

The following are warning signs a lender may be in breach:

- The lender failed to make enquiries to ensure that your loan was suitable for your requirements or objectives
- The lender failed to verify your reliable income in your loan application
- The lender did not ask you about your actual living expenses or obtain statements but instead determined your monthly expenses based on a benchmark tool like the household expenditure measure
- You were suffering from illness, were elderly, or did not understand English when you applied for the loan and the lender did not accommodate for this
- You were given an interest only loan that you are struggling to repay since the interest only period ended or you will struggle to pay at that time
- Your interest only loan had an interest only period of greater than 5 years
- The loan was for more than the value of the investment property
- The lender did not ensure that you could still repay the loan if your interest rate increased
- The lender failed to properly consider your existing debts
- The lender unreasonably over-estimated the rental income returns from an investment property that you were planning to buy with the loan
- Your ability to repay the loan was reliant on rising house price

What should a borrower do if they cannot repay their Mortgage?

If you make mortgage repayments by direct debit, but there is not enough money in your account, the direct debit will be rejected and you are likely to be charged fees on your account and your mortgage by the lender.

If you cannot make a loan repayment you should:

- Contact your lender and negotiate a variation to arrange a direct debit amount you can afford
- Cancel the direct debit and make repayments using another method such as Bpay or direct credit

When is a borrower eligible for a 'hardship variation'?

If you are struggling to meet repayments you may be able to apply for a hardship variation.

Under the National Credit Code, if you have 'reasonable cause' for being unable to meet your repayments, you can ask the lender to change the loan contract to change your repayments.

Examples of 'reasonable cause' include illness or unemployment.

What can a borrower ask for in a 'hardship variation'?

A borrower can ask for any change that will make the loan repayments more affordable or to give time to sell the home, such as:

- Extend the loan period, to make smaller repayments over a longer period
- Postpone loan repayments for an agreed period
- Extend the loan period and postpone the repayments for an agreed period
- Postpone payments while selling the house

When can a 'hardship variation' request be unsuccessful?

If a lender rejects the hardship variation, they must provide reasons. If you are not satisfied with the lender's response you can ask to speak to the internal dispute resolution section.

If you are not satisfied with the internal decision, the next step to take is to apply to the Australian Financial Complaints Authority (AFCA) for a review of that decision.

AFCA is the free and independent External Dispute Resolution (EDR) scheme for financial service providers, borrowers and consumers.

T: 1800 931 678

What can a lender do if you miss a mortgage repayment?

The lender can take the necessary steps towards taking possession of your home if you fail to remedy a missed mortgage repayment within the period of which the lender notifies you.

The sooner you act the more likely a repayment arrangement can be negotiated.

Where to Access More Information or Assistance

If you believe you have been given an irresponsible loan, or are struggling to make mortgage repayment or need general financial advice, you can contact one of the following services for guidance:

Financial Counselling Australia Helpline

T: 1800 007 007

Financial Information Services

T: 132 300 (ask for Financial Services)

W: www.humanservices.gov.au/customer/services/financial-information-service

National Information Centre on Retirement Investments

T: 1300 636 878

Pension Loan Scheme (Available through Centrelink)

W: www.humanservices.gov.au/customer/services/centrelink/pension-loans-scheme

Moneysmart

W: www.moneysmart.gov.au

No Interest Loan Scheme (NILS) (Accessed through Good Shepherd)

T: 13 64 57

W: www.nils.com.au

Personal Loans to an Individual

Before you give money to a family member or friend, it is important you know the risks involved.

What is the difference between a Loan and a 'Gift'?

The distinction between a 'loan or a gift' is a loan must be repaid whereas a gift does not need to be repaid.

To clarify whether the 'type' of money you are giving is a loan or a gift:

- It is vital that you put your intentions (loan or gift) in writing

- A written agreement should be signed by all parties
- Failure to do so could result in the financial assistance being classified as a gift and ‘gifted money’ can be the source of conflict, especially where relationship break-ups or deceased estates are concerned
- The recipient of a loan of money may claim the money was a gift rather than a loan and may refuse to repay the money

What should be put in writing to distinguish lending as a loan or a ‘gift’?

The following information and distinctions should, at a minimum, be put in writing and signed by all parties to the loan:

- The background and intention of the loan
- The amount of the loan
- Schedule of interest payments if applicable
- Schedule of regular loan repayments if applicable
- The period of the loan and consequences if payment is late (i.e. default interest if applicable)
- Clearly state any security for the loan, e.g., a registered mortgage or unregistered mortgage protected by caveat lodged on the title of property owned by the borrower

Again, any mortgage must be in writing and signed.

- Date when the loan must be repaid and penalties if the repayment is late (if applicable)
- All parties to the loan should be included in the written loan agreement, i.e. borrower and guarantor parties

You should get a lawyer to prepare or review the loan and security documents.

Could the person/s lending money to family or friends be at risk?

You could risk losing your home and savings by assisting your family financially if you:

- Guarantee a loan taken out by your family member
- Take out a loan in your name, with the intention that your child will pay off the loan
- Transfer the title of your home to your child so they can use the property as security for a loan

In these situations, you will be relying on your family member to be able to pay off the loan. If they do not keep up with the loan repayments or default in some other way, the lender may have the legal right to take the home you own and sell it to pay off the debt. If the value of the home does not cover the loan the lender can also pursue you for any shortfall which could, in turn, jeopardise any other property you may own.

Can I protect my interests when lending money or offering assets as collateral for a loan?

You can register a security interest over non-land assets with the Personal Property Securities Register (PPSR). The security interest needs to be in writing, signed and the required PPSR registrations made within prescribed time periods. Again, you should get your lawyer to prepare and register these interests.

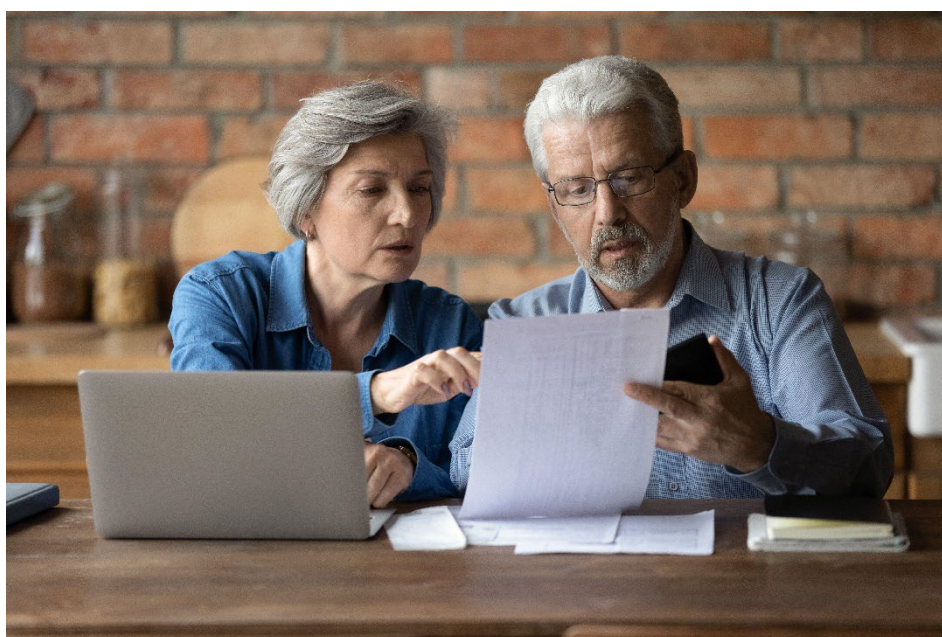
T: 1300 007 777

E: enquiries@ppsr.gov.au

To register go to:

<https://www.ppsr.gov.au/registering/create-your-registration/how-register-security-interest-ppsr>

For example, if your child's business becomes insolvent and you have a properly prepared, signed and registered security interest, as a secured creditor you have a priority ranking over most unsecured creditors when the assets of the business are sold. By registering a mortgage over the property, you can require the proceeds from the sale of the property to be paid to you, subject to the rights of other secured creditors.



Granny Flats

A granny flat arrangement is one in which a person exchanges assets or money for a right to live on someone else's property, often for as long as they live.

Why do people consider a granny flat arrangement?

People usually go into a granny flat arrangement with the best of intentions, but it is difficult to predict what the future circumstances and consequences will be. Due to the element of trust between family members, granny flat arrangements are often made on an informal basis. However, this can pose the risk of disputes in the future.

If you are transferring your property to your child and/or other person/s or spending a sum of money to build a granny flat on their property, you need to consider what would happen if:

- You have a falling out with the person who owns the property where you build a granny flat
- The property owner gets into financial trouble and the house has to be sold
- The property owner's marriage falls apart, resulting in a property settlement order that requires the property to be sold
- The property owner just decides to sell

All of these possibilities would leave you in a very uncomfortable situation which could even lead to your being left homeless and without any compensation for the money you have spent on the granny flat.

It is recommended that the arrangement be put in writing, paying attention to potential scenarios such as:

- What if we end up not getting along?
- What if my care needs change?
- If I need to go into residential aged care, what will the financial arrangement be?
- Can I ensure that this is the best thing for me now and into the future?
- What if the property owner's marriage or partnership breaks down?
- What if the family or property owner is forced (or chooses) to relocate?
- Will I have my name on the Certificate of Title?

In the documentation of a granny flat agreement, it is recommended that you seek independent legal and financial advice.

Who to contact for Legal Information, Advice or Assistance

To assist in writing the loan agreement and for legal advice contact:

Advocare WA provides education, advocacy and information to support the rights of older people in Western Australia.

Go to: Your Money, Your Life, Your Choice - Caring for your Assets as you Age:

<https://www.advocare.org.au/wp-content/uploads/2019/03/39869-Advocare-Assets-Brochure-WEB.pdf>

A hard copy of this brochure may be obtained by contacting Advocare.

T: 08 9479 7566

Country Callers T: 1800 655 566

E: rights@advocare.org.au

W: www.advocare.org.au

Australian Taxation Office provides information regarding individual tax concerns.

T: 132 861

W: www.ato.gov.au

Centrelink Financial Information Service provides free information to help you understand how any financial decisions you are considering will affect your pension.

T: 132 300

W: www.humanservices.gov.au

Financial Counselling Network offers free, independent and confidential financial information, advice, advocacy and referrals to counsellors.

W: www.financialcounsellingnetwork.org.au

Moneysmart helps you take control of your money and build a better life with free tools, tips and guidance.

W: www.moneysmart.gov.au

Department of Communities WA | Housing provides information regarding community and social housing as well as ancillary dwelling (granny flat) requirements.

Go to: Ancillary Dwellings – Housing Authority:

https://www.housing.wa.gov.au/HousingDocuments/Ancillary_Dwellings_Fact_Sheet.pdf

T: 08 9222 4666

Free Call: 1800 0923 325

E: generalenquiries@housing.wa.gov.au

Department Veterans Affairs provides information regarding Veteran benefits and payments.

T: 133 254

W: www.dva.gov.au

Law Society of Western Australia is the peak professional association for lawyers in Western Australia.

T: 08 9324 8600

W: www.lawsocietywa.asn.au

Consumer Credit Legal Service WA provides free legal advice to WA consumers in the area of banking, finance and related consumer disputes.

T: 08 9221 7066

W: <https://cclswa.org.au/>

Northern Suburbs Community Legal Centre (NSCLC) + Older Peoples Rights Service (OPPRS) provides legal advice, information, referral and crisis counselling for older people in Perth WA metropolitan area who are experiencing elder abuse or at risk of being abused, including financial and property matters.

T: 08 9440 1663 Mirrabooka

T: 08 9301 4413 Joondalup

W: www.nsclegal.org.au

Elder Rights WA (ERWA) provides a holistic legal service for seniors and the aged based in Civil Law Division of Legal Aid WA.

T: 1300 650 579 Legal Aid WA Infoline

E: elderrightswa@legalaid.wa.gov.au

W: <https://www.legalaid.wa.gov.au/>

Seniors Housing Advisory Centre provides general information about housing options and what to consider.

DMIRS Seniors Housing Guide

Go to: Buying or Building:

<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/snrhsgguidebuyingorbuilding.pdf>

Go to: Contracts and Family Agreements:

<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/snrhsgguidecontractsandagreements.pdf>

T: 1300 367 057

T: 1300 304 054 Consumer Protection

E: seniors.housing@dmirs.wa.gov.au



Reverse Mortgages

A reverse mortgage allows you to borrow money using the equity in your home as security for the loan.

Interest is charged but you do not need to make repayments while you live in your home, rather the interest is added to your loan balance. The loan, interest and additional fees must be repaid in full when the home is sold, the owner dies or moves into residential age care.

What is a Reverse Mortgage and are there any risks?

Reverse mortgages are loans often offered to seniors who own their own homes. Seniors can use the equity in their home as security to get access to cash.

This is a trade-off which comes with risks:

- High interest rates
- Expensive fees
- Huge penalties if you cancel the loan
- Compound interest leading to rapidly rising debt
- Impact on pension eligibility; extremely vulnerable to a fall in house prices, as this eats into remaining equity
- Less equity available to cover future expenses
- restrictions on selling, renting, renovations or living arrangements



What can be done as protection against these risks?

Before agreeing to a reverse mortgage, ensure you fully understand the terms and conditions of the loans and the financial and legal consequences. It is important to seek independent financial and legal advice.

Five (5) Questions to ask before negotiating a Reverse Mortgage

1. How much is this loan going to cost me? ASIC's Moneysmart website www.moneysmart.gov.au has a reverse mortgage calculator which can give you an indication of the compounding effect of interest over time.
2. Does the proposed reverse mortgage have a No Negative Equity Guarantee i.e., the loan repayments will not exceed the net sale proceeds of the house. If so, how can that Guarantee be lost?
3. Has the loan been structured so I will always have sufficient funds for future expenses such as medical bills or a deposit for aged care? How could my pension be affected?
4. Have I had all the terms and conditions explained to me clearly and do I understand them?
5. Is a reverse mortgage the best choice for me or are there other options?

For further information regarding negotiating a Reverse Mortgage

Moneysmart helps you take control of your money and build a better life with free tools, tips and guidance.

W: www.moneysmart.gov.au



FAMILY VIOLENCE

Under section 4ab of the *Family Act 1975*, family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member) or causes the family member to be fearful.

To view section 4ab go to: *Family Act 1975*

<https://www.fccoa.gov.au/fl/fv/overview>

Examples of behaviour that constitute family violence include, but are not limited to:

- An assault
- A sexual assault or other sexually abusive behaviour
- Stalking
- Repeated derogatory taunts
- Intentionally damaging or destroying property
- Intentionally causing death or injury to an animal
- Unreasonably denying the family member the financial autonomy that they would otherwise have had
- Unreasonably withholding financial support needed to meet the reasonable living expenses of the family member at a time when the family member is entirely or predominantly dependent on the person for financial support
- Preventing the family member from making or keeping connections with his or her family, friends or culture
- Unlawfully depriving the family member, or any member of the family member's family, of his or her liberty

If you are experiencing any of these examples contact the police, a lawyer or someone you trust.

There are many support services for victims of family violence, some of which include:

Family and Domestic Violence Services and Resources

T: Crisis Care: Free call 1800 199 008

<https://www.wa.gov.au/organisation/departments/family-and-domestic-violence-services-and-resources>

Aboriginal Family Legal Services

T: 08 9355 1502

T: 1800 469 246

W: <https://www.afls.org.au/contact/>

Multicultural Services Centre of WA

T: 9328 2699

W: <https://www.mscwa.com.au/>



Financial Abuse

Financial abuse occurs when a person you trust uses that relationship of trust to gain access to your money or property.

Examples include:

- Pressure to act as guarantor for a loan
- Pressure to transfer or sell your house
- Pressure to take out a loan in your name for someone else to repay
- Pressure to give away your money
- Money you have loaned not being repaid
- Persons authorised to manage your money not acting in your best interest, or using your money for themselves

Information and support if you believe you are being financially abused

Northern Suburbs Community Legal Centre (NSCLC) + Older Peoples Rights Service (OPPRS) provides legal advice, information, referral and crisis counselling for older people in Perth WA metropolitan area who are experiencing elder abuse or at risk of being abused, including financial and property matters.

T: 08 9440 1663 Mirrabooka

T: 08 9301 4413 Joondalup

E: info@nsclegal.com.au

W: www.nsclegal.org.au

Elder Rights WA Services (ERWA) is a holistic legal service for senior and aged based in the Civil Law Division of Legal Aid WA providing legal advice, assistance and representation on certain types of legal matters and their social work team provides a range of tailored social work support in assisting clients in dealing with social, physical and mental challenges.

T: 1300 650 579

E: elderrightswa@legalaid.wa.gov.au

W: <https://www.legalaid.wa.gov.au/>

GUARDIANSHIP AND ADMINISTRATION ACT 1990

The *Guardianship and Administration Act 1990* administered by the State Administration Tribunal (State Administrative Tribunal) recognises that people who are not capable of making reasonable judgements for themselves may need someone to make decisions for them, not only to ensure their quality of life is maintained, but also to protect them from the risk of neglect, exploitation and abuse.

Information about the function and scope of the *Act* can be found at:

[State Administrative Tribunal \(State Administrative Tribunal\)](#)

T: 08 9219 3111

T: 1300 306 017 (cost of a local call)

Address: Level 6, State Administrative Tribunal Building, 565 Hay Street Perth WA 6000

P: GPO Box U1991 Perth WA 6845

W: <https://www.sat.justice.wa.gov.au/>

To view the *Guardianship and Administration Act 1990* go to:

https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_406_homepage.html



Enduring Power of Attorney

An Enduring Power of Attorney (EPA) is a legal agreement that allows you to appoint a trusted person to make decisions regarding your finances and property on your behalf.

What are the laws governing an Enduring Power of Attorney?

The rules of an Enduring Power of Attorney are set out in Part 9 of the *Guardianship and Administration Act 1990*.

To view Part 9 of the *Guardianship and Administration Act 1990* go to:

[https://www.slp.wa.gov.au/statutes/swans.nsf/\(DownloadFiles\)/Guardianship+and+Administration+Act+1990.pdf/\\$file/Guardianship+and+Administration+Act+1990.pdf](https://www.slp.wa.gov.au/statutes/swans.nsf/(DownloadFiles)/Guardianship+and+Administration+Act+1990.pdf/$file/Guardianship+and+Administration+Act+1990.pdf)

Can a person continue to manage financial and property matters even if they have made an Enduring Power of Attorney?

When you make an Enduring Power of Attorney you can choose for it to start straight away or only if you lose legal capacity.

If you choose for it to start straight away, as long as you have capacity, you can continue to manage your own financial affairs and property matters, but your enduring attorney can start using the authority you have given them to help with these matters, if you want them to.

If you choose for it to start only when you lose capacity, then your enduring attorney cannot use the authority you have given them until they make an application to the State Administrative Tribunal (State Administrative Tribunal) and the State Administrative Tribunal determines that you have lost capacity.

Why would someone appoint an Enduring Attorney when completing an Enduring Power of Attorney?

By completing an Enduring Power of Attorney, a person or agency who you know and trust, can be authorised to make property and financial decisions for you in your best interests, in the event that you lose capacity or are physically unable to manage your finances.

If you do not appoint an Enduring Power of Attorney, there may be no one to make decisions on your behalf if you lose capacity and an application will need to be made to State Administrative Tribunal to have someone appointed.

Unlike a Power of Attorney an Enduring Power of Attorney remains valid after you lose legal capacity.

Having an Enduring Power of Attorney can act as a safeguard against future financial abuse in the event you lose capacity as you will have given someone you trust the authority to look after your

finances and property affairs.

Who can complete an Enduring Power of Attorney?

An Enduring Power of Attorney can be executed by anyone over the age of 18, who has full legal capacity.

'Full legal capacity' means that a person must be able to understand the nature and effect of the document they are completing.

An Enduring Power of Attorney cannot be made by a person whose capacity might be in doubt due to mental illness, brain injury, cognitive impairment or dementia.

Who should be appointed an Enduring Power of Attorney?

Giving someone else the authority to manage your financial affairs and property matters is a very serious decision. Therefore, you must ensure the person is someone you know well and can trust to look after your finances in your best interests.

How do you appoint an Enduring Power of Attorney?

To appoint an attorney, you must complete an Enduring Power of Attorney form. You may appoint more than one person, but you must stipulate whether they can act independently of each other (i.e. 'act jointly or severally') or whether all signatories have to agree on all decisions made on your behalf (i.e. 'act jointly').

What happens once the Enduring Power of Attorney has been drafted?

To make your Enduring Power of Attorney legal, it needs to be signed by you and your enduring attorney. Your signature must be witnessed by two (2) independent witnesses.

One should be someone who can legally witness a Statutory Declaration, such as a Justice of the Peace, lawyer, doctor, teacher, police officer, pharmacist or nurse.

The other witness can be anyone who is over 18. Your enduring attorney must accept their appointment by signing the Enduring Power of Attorney. Their signature does not need to be witnessed.

Where to Find an Enduring Power of Attorney Form

Go to: Office of the Public Advocate and download for free the **Enduring Power of Attorney Kit**. The kit has step-by-step instruction to help you complete the form, and two (2) copies of the form at the back of the kit:

<https://www.wa.gov.au/government/publications/enduring-power-of-attorney-information-kit>

Go to: Office of the Public Advocate and download for free the more comprehensive **Guide to Enduring Power of Attorney** which includes Frequently Asked Questions (FAQs).

<https://www.wa.gov.au/government/publications/guide-enduring-power-of-attorney>

You can buy a copy of the **Enduring Power of Attorney Kit** from the **Citizens Advice Bureau** for approximately \$2.00 by:

T: 08 9221 5711

W: <https://cabwa.com.au>

Visit: Your local branch of the Citizens Advice Bureau

Alternatively: A solicitor or the Public Trustee may prepare an Enduring Power of Attorney on your behalf.

Abuse of an Enduring Power of Attorney

It is important to remember that who you appoint as your enduring attorney must exercise their power with reasonable diligence to protect your interests. If they fail to do so they can be held liable to you for any losses incurred.

A misuse of an Enduring Power of Attorney occurs when the enduring attorney abuses the power given to them in order to benefit themselves. This can be a form of financial abuse.

An example of a misused Enduring Power of Attorney includes the following:

- Jane is 85 years of age, hard of hearing and frail. She is still cognitive but cannot get out to the bank to pay her bills and withdraw money
- Jane sees her lawyer and signs an Enduring Power of Attorney in which she appoints her daughter Betty as her enduring attorney for financial matters with the powers to start immediately
- Betty takes the document to Jane's bank. The Bank officer looks at the document and accepts that Betty is able to act as Jane's enduring attorney for financial matters immediately and notes this in the bank records
- Betty is having financial problems. Every week she shops for Jane, buying groceries with Betty's bank card, but she also makes cash withdrawals and rather than give this money to Jane, she keeps it for herself
- Jane does not monitor her bank account statements and is unaware that money is being used by Betty in this way

Important Takeaway Point



Who you appoint must act in your best interests in fulfilling the requirements of your Enduring Power of Attorney. If you believe your Enduring Attorney is not acting in your best interest you can contact the **Office of the Public Advocate** telephone advisory service on **1300 858 455**.

If your Enduring Power of Attorney is abusing their role, an application can be made to the State Administrative Tribunal which has a role in overseeing the use of their powers. The State Administrative Tribunal can end an Enduring Power of Attorney if it is not being used appropriately and appoint an administrator to manage your finances instead.

Applications to the State Administrative Tribunal can be made by you or by anyone who is concerned about you and whether your finances are being managed in your best interests.

Revoking an Enduring Power of Attorney

To revoke the Enduring Power of Attorney you must have full legal capacity. This should be done in writing. If you lose capacity, an application must be made to the State Administrative Tribunal to decide if the Enduring Power of Attorney should be revoked.

Help to prepare an Enduring Power of Attorney

Public Trustee

For new inquiries for help with preparing an Enduring Power of Attorney ([fee is payable](#)).

T: 1300 746 116

Citizens Advice Bureau

For help with drafting an Enduring Power of Attorney ([fee is payable](#)) and to access a fact sheet on Enduring Power of Attorney.

T: 08 9221 5711



For More Information about an Enduring Power of Attorney

Office of the Public Advocate

The Office of the Public Advocate operates a telephone advisory service from 9.00am-5.00pm Monday to Friday with recorded information. It is available at other times and has a guide, an information kit and an information sheet available.

T: 1300 858 455

T: 08 9278 7300

State Administrative Tribunal

The State Administrative Tribunal provides information on applications for intervention into Enduring Powers of Attorney.

T: 08 9219 3111

T: 1300 306 017 Local call cost

Enduring Power of Guardianship (EPG)

An is a legal document that authorises a person of your choice, to make important personal, lifestyle and treatment decisions on your behalf should you ever become incapable of making such decisions for yourself.

By creating an Enduring Power of Guardianship, you can rest easy knowing that, if at some point in the future your capacity to make decisions is impaired, someone you trust will have the power to make important decisions on your behalf. You may appoint more than one person in this role, but it is important to note that all enduring guardians you appoint must agree in all decisions (act 'jointly').

This is different to an Enduring Power of Attorney, where you can also appoint more than one person but you can choose whether your enduring attorneys are able to make decisions independently of each other ('act jointly or severally') or whether they all have to agree on all decisions made on your behalf ('act jointly').

Given enduring guardians need to agree on decisions, it is a good idea to think about whether the people you want to appoint will work well together.

Who can appoint an Enduring Power of Guardianship?

To make an Enduring Power of Guardianship you must:

- Be 18 years of age or older
- Have full legal capacity (this means you must be able to make a formal agreement and understand the implications of statements contained in that agreement)

When does an Enduring Power of Guardianship come into operation?

An Enduring Power of Guardianship comes into operation only if you are no longer able to make reasonable judgments about personal, lifestyle or treatment matters.

If you do not appoint an Enduring Power of Guardianship, then other people will decide if you have lost capacity to make these judgements, such as your spouse/partner, children, siblings, carers and doctors.

How is an Enduring Guardian appointed?

For an Enduring Guardian to be appointed, you must complete the relevant form that is specified in the *Guardianship and Administration Regulations 2005* (WA).

The person you are appointing as your enduring guardian does not need to be with you when you sign the Enduring Power of Guardianship, but you must sign with two witnesses present. The person you are appointing as your enduring guardian cannot be a witness.

The Enduring Power of Guardianship will not be valid until the person you are appointing as your enduring guardian signs that they accept the appointment. They must also sign with two witnesses present.

Witnesses must be over the age of 18 and one of the two witnesses must be a person authorised to witness statutory declarations under the *Oaths, Affidavits and Statutory Declarations Act 2005* (WA).

Go to: Office of the Public Advocate and download for free the **Appointment of an Enduring Guardian Form** at:

https://www.publicadvocate.wa.gov.au/files/epg_kit.pdf

Where should you keep an Enduring Power of Guardianship?

There is no formal registration process for an Enduring Power of Guardianship. Therefore, it is vital that you and your chosen guardian know where the original document will be kept.

How can an Enduring Power of Guardianship be revoked?

An Enduring Power of Guardianship can be revoked by you, as the appointor, at any time while you still have legal capacity. However, if you lose capacity, the enduring guardian must apply to the State Administrative Tribunal to alter or cancel the arrangement.

What decisions can an Enduring Guardian make on your behalf?

The scope of authority given to an Enduring Guardian is determined by the appointer when making an Enduring Power of Guardianship.

You may authorise your Enduring Guardian to make the same range of decisions as a Guardian, who is appointed by the State Administrative Tribunal. You may also limit the decisions to be made by your Guardian.

Your Enduring Guardian can make all or some of the following decisions on your behalf:

- Decide where you live, whether permanently or temporarily
- Decide who you live with
- Decide whether or not you work and, if so, any matters related to that work
- Make treatment decisions on your behalf to any medical, surgical or dental practitioner or other health care (including palliative care and life-sustaining measures such as assisted ventilation and cardio-pulmonary resuscitation)
- Decide what education and training you receive
- Determine who you associate with
- Commence, defend, conduct or settle any legal proceedings on your behalf, except proceedings that relate to your property or estate
- Advocate for and make decisions about the support services you access
- Seek and receive information on your behalf

In brief, you may restrict the decision-making authority of your Enduring Guardian. For example, you may authorise your Enduring Guardian to make decisions about any treatment you receive, but not about where you live or with whom you associate.

What can an Enduring Guardian NOT DO?

An Enduring Guardian cannot do or make the following decisions on your behalf:

- Make decisions about your finances, property or estate (which are made by an enduring attorney under an Enduring Power of Attorney if you have one)
- Vote for you in an election
- Consent to an adoption
- Consent to a marriage involving you or a person under 18 years of age
- Consent to you being sterilised without the approval of the Tribunal
- Make or change your Will without an order from the Supreme Court of Western Australia

For Further Information regarding an Enduring Guardian

Office of the Public Advocate

The Public Advocate (an independent statutory office within the Department of Justice) provides advice and information on guardianship and administration and Enduring Powers of Attorney and Enduring Powers of Guardianship.

Address: PO Box 6293, East Perth WA 6892

T: 08 9278 7300

E: opa@justice.wa.gov.au

W: www.publicadvocate.wa.gov.au

State Administrative Tribunal

The State Administrative Tribunal (the Tribunal falls under the portfolio of the State Attorney General within the Department of Justice) can be contacted for information and advice on applications for Guardianship, Administration, Enduring Powers of Guardianship, Enduring Powers of Attorney and Advance Health Directives.

Address: Level 6, State Administrative Tribunal Building, 565 Hay Street, Perth WA 6000

T: 08 9219 3111

E: sat@justice.wa.gov.au

W: www.sat.justice.wa.gov.au

PUBLIC TRUSTEE

The Public Trustee offers independent, professional trustee and asset management services to the Western Australian community. These include Will and Enduring Power of Attorney drafting, estate administration and personal trustee and administration services.

The Public Trustee of Western Australia

The Public Trustee is the go-to body for anyone who does not have family or friends who will act in their best interest when they die or who prefers not to appoint family or friends to manage their affairs.

The Public Trustee will administer your estate if you die without a Will or have not appointed an Executor or a Power of Attorney.

What services are provided by the Public Trustee in Australia?

The Public Trustee offers Independent Trustee and Asset Management Services.

Independent Trustee and Asset Management Services provided by the Public Trustee

- The drafting of a Will and an Enduring Power of Attorney
- Deceased Estate Administration
- Personal Trustee and Administration Services

The Public Trustee offers a range of free and fee-based services, including:

- Preparing and giving advice to make a Will
- Preparing an Enduring Power of Attorney and acting as the Attorney under an Enduring Power of Attorney
- Administering Deceased Estates
- Managing the financial affairs of people who have been deemed legally incapable of doing so themselves
- Acting as Trustee for people under the age of 18
- Acting as Trustee when appointed to manage personal injuries or criminal injuries compensation
- Acting as Trustee when appointed by Deed

- Providing support and examining the accounts of private personal financial administrators
- These services are accessible to all Western Australians

The Public Trustee is impartial and is required to act in the best interests of both the trust they are administering and the beneficiaries.

For Further Information

Fees

The Public Trustee charges a variety of fees to administer a deceased estate. These fees are set by the WA Government under the *Public Trustee Act 1941* and are regularly reviewed. As an indication, the Public Trustee may deduct a fee of up to 6.6% on the total interest or income earned by investments as well as a charge on the value of assets such as a house or land.

Contact Details

Public Trustee Government of Western Australia

T: 1300 746 116

E: publictrustee@justice.wa.gov.au

Address: 553 Hay Street, Perth WA 6000

W: <https://www.wa.gov.au/organisation/department-of-justice/public-trustee>

State Administrative Tribunal

The State Administrative Tribunal (the Tribunal falls under the portfolio of the State Attorney General within the Department of Justice) can be contacted for information and advice on applications for Guardianship, Administration, Enduring Powers of Guardianship, Enduring Powers of Attorney and Advance Health Directives.

Address: Level 6, State Administrative Tribunal Building, 565 Hay Street, Perth WA 6000

T: 08 9219 3111

E: sat@justice.wa.gov.au

W: www.sat.justice.wa.gov.au

PUBLIC ADVOCATE

The Public Advocate (an independent statutory office within the Department of Justice) is an independent statutory officer created under the *Guardianship and Administration Act 1990* (WA) to promote and protect the rights of adults with decision-making disabilities and to reduce their risk of neglect and abuse.

The Office of the Public Advocate WA

The Public Advocate can provide information and advice about guardianship and administration, as well as enduring powers of administration and guardianship.

The *Guardianship and Administration Act 1990* recognises that people who are not capable of making reasonable judgements for themselves may need someone to make decisions for them not only to ensure their quality of life is maintained, but also to protect them from the risk of neglect, exploitation and abuse.

To view the *Guardianship and Administration Act 1990* go to:

https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_406_homepage.html

The contact details for the Office of the Public Advocate WA

T: 1300 858 455

Address: 23 David Malcolm Justice Centre, Perth WA 6000

E: opa@justice.wa.gov.au

W: <https://www.publicadvocate.wa.gov.au/>



What services are provided by the Office of the Public Advocate in Australia?

The Public Advocate provides a range of services to ensure that vulnerable Western Australians with a decision-making disability are protected.

Services provided by the Public Advocate

- Investigation of concerns about the wellbeing of a person with a decision-making disability and whether a guardian or administrator is required
- Investigation of specified applications made to the State Administrative Tribunal to assist the State Administrative Tribunal to determine whether a guardian or administrator is required
- Guardianship services (for personal, lifestyle and/or treatment decisions) when the State Administrative Tribunal determines that there is no one else available, suitable or willing to act as the person's guardian
- Investigation of concerns about the abuse, neglect or exploitation of adults with decision-making disabilities

If you believe an attorney is not acting in your best interests, we recommend you contact the Office of the Public Advocate.

Telephone Advisory Service

The Public Advocate provides a Telephone Advisory Service for people who have a personal or professional interest in the rights and needs of adults with a decision-making disability. An advisory officer can be contacted Monday to Friday from 9.00am to 4:30pm.

TELEPHONE ADVISORY SERVICE for the Office of the Public Advocate WA

T: 1300 858 455

Address: 23 David Malcolm Justice Centre, Perth WA 6000

W: <https://www.publicadvocate.wa.gov.au/>

WILLS

The *Wills Act 1970* sets out the formal requirements for making a Will in Western Australia.

To view the *Wills Act 1970* go to:

https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_1081_homepage.html

A Will

A Will is an important document that you sign to ensure that after your death, your property is distributed according to your wishes. It is a legal document which sets out what you want to happen to your assets and property after your die (your Estate), and who you want to carry out your wishes after you die (your Executor).

What can be included in a Will?

A Will can include:

- How you want your property (like a home, car, money, shares, jewellery or other items of significant or sentimental value) to be distributed
- Whether you want to be buried or cremated
- Whether you would like to donate your organs (you may also consider including this in an Enduring Power of Guardianship as decisions may need to be made about organ donation before anyone can read your Will)
- If someone can live in your home after you die and if they are a different person to whom you are giving your home
- If you want to absolve anyone from paying back debts owed to you

When should a Will be made?

You can make a Will whenever you want and can alter it at any time, provided you are aged 18 or older and you have 'testamentary capacity'. This means you are of sound mind, you understand what a Will is and its effect and you can communicate what you want to include in it and why.

It is important you are acting of your own free will and not under undue influence or duress when making your Will.

How do you make a Will?

You can make a Will by:

- Seeing a lawyer who can help you draft a Will
- Writing a Will yourself
- Buying a Will kit which can be purchased from Australia Post
- Using the Public Trustee (see the next section)

There are certain requirements that you must follow to ensure that your Will is valid and enforceable.

If you are unsure about these requirements, asking a lawyer for assistance will help ensure you get it right. It is recommended to seek legal advice to ensure a Will is correctly drawn-up.

A Will is a complex document. If there is a mistake, it may not be enforceable (it can be challenged) and can lead to delays and disputes.

What is an 'Executor' of a Will?

An 'Executor' of a Will is the person who is tasked with carrying out your wishes as stated in the Will when they pass away. It is vital the 'Executor' knows where the Will is stored.

Duties of an 'Executor' include:

- Organising your funeral and burial
- Applying for Probate if required
- Managing the estate and accounting for all assets (including all monies)
- Collecting the assets of the estate, paying any debts and taxes and distributing assets according to the Will
- Looking after the financial well-being of any minor beneficiaries (aged under 18)

For the appointment of an 'Executor' what should be considered?

Questions to consider

1. Is the chosen person willing and able to carry out the duties of an 'Executor' (these duties can be difficult, complicated and time consuming)?
2. Will the person be able to engage legal or other professional help (for example, lawyers, accountants and real estate agents)?
3. Is the person aware that they could become personally liable for actions they take as the 'Executor'?

Who can be appointed as an 'Executor' of a Will?

An 'Executor' of a Will can be anyone who is over the age of 18 who is trusted to carry-out the duties of this role. You can appoint more than one person as your 'Executor' but, if you do, you will need to make it clear whether they are to act together or as substitutes.

Appointing the Public Trustee as an 'Independent Executor'

You may decide to appoint the Public Trustee to act as 'Executor'. People choose the Public Trustee as the 'Executor' to spare family or friends from carrying out the demanding responsibilities of an 'Executor'.

You may not have anyone who is trusted to take on the role of 'Executor'. If there is conflict between family members, it may be appropriate to appoint the Public Trustee to manage the process.

The Public Trustee is experienced in estate administration with in-house estate managers, accountants and solicitors and recruits external experts when required. There is a fee involved if the Public Trustee is chosen to manage the process.

What 'Assets' are not considered part of the 'Estate' of a Will?

Some 'Assets' may be dealt with outside of the Will. These include:

- 'Assets' owned jointly as joint tenants with another person, such as property, shares or a bank account. These generally automatically pass to the surviving joint tenants, and so will not form part of the Estate.
- Superannuation and life insurance policies if a beneficiary for a policy has been nominated. If beneficiaries have not been nominated, these policies can be considered an 'Asset' and distributed in a Will depending on the rules of the particular superannuation fund or insurer.
- Property held in a trust

If you are unsure or unclear then it is a good idea to seek legal advice.

What preparations are required when meeting for legal advice regarding a Will?

Prepare the following for your meeting

- A list of all the people in the immediate family, including the full name/s, correct contact information, the familial relationship and the ages of all children, including stepchildren
- Details of the person to be appointed as 'Executor' of the Will, including their full name and address
- The full names and addresses of any people or organisations who will receive bequests (gifts of property, etc.) from your estate (these will be your 'Beneficiaries')
- A list of all 'Assets' such as, property, vehicles, investments and items of significant or sentimental value, as well as any 'Liabilities'
- Details of any superannuation and insurance policies and any nominated beneficiaries of the policies

What are the formal requirements for making a Will?

One of the essential requirements for making a Will is that there must be two (2) witnesses aged over 18, present at the same time, to witness the signature of the 'Testator', the person making the Will. These witnesses should not be a beneficiary nor a spouse or de facto partner of a beneficiary in the Will. It is a good idea for everyone to use the same pen when signing.

There are many other formal requirements, therefore it is recommended you seek independent legal advice.

What are the consequences of dying without a Will?

If a person dies without a valid Will this is referred to as 'Dying Intestate'.

If you die without a Will, the law will decide what happens to your assets and property and who it is given to, which may not always align with what you wish.

When a person dies intestate, section 14 of the *Administration Act 1903* (WA) sets out how the deceased estate is divided among family members. Because this is enshrined by law, no one will have any authority or power to deviate from the provisions of the *Administration Act*.

If you die without a Will, anyone over the age of 18 who is entitled to a share of the estate can apply for 'letters of administration' to the Probate Office of the Supreme Court of Western Australia. This can be complex and may require the services of a lawyer. If there is no one to apply for letters of administration, the Court can appoint another person or body as Administrator of the Estate.

ORGAN DONATION

Organ and tissue donation is governed under the *Human Tissue and Transplant Act 1982*.

The Human Tissue and Transplant Act 1982

The *Human Tissue and Transplant Act 1982* makes provision for and in relation to the removal of human tissues for transplantation, other therapeutic purposes, or medical or scientific purposes, for post-mortem examinations.

To view the *Human Tissue and Transplant Act 1982* go to:

https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_436_homepage.html

When is Organ Donation Authorised?

Under Section 22 of the *Human Tissue and Transplant Act 1982* a designated officer for a hospital may authorise the removal of tissue from your body when you die, when:

- The designated officer is satisfied that during your lifetime you expressed the wish for or consented to the removal of tissue
- The designated officer has no reason to believe that you had expressed an objection to the removal of tissue
- The designated officer is satisfied that your next of kin consents to the removal of tissue from your body

The authority of a designated officer to authorise the removal of tissue from your body after death is restricted by your wishes or consent and by the consent of your next of kin.

The priority order for your next of kin when seeking consent to Organ Donation

- Spouse or de facto, domestic or same sex partner
- Adult son or daughter
- Parent
- Brother or sister

How do you consent to Organ Donation?

You can consent to organ donation by registering your decision to become an organ and tissue donor after death with the 'Australian Organ Donor Register'.

However, regardless of you registering your decision, consent from your next of kin must still be obtained at your time of death. This is why it is vital to express your wishes to your family, so they are able to follow such wishes upon your death.

It is important to express these wishes in your Enduring Power of Guardianship (if you have appointed one) and your Advance Health Directive.

The contact details for how to consent to Organ Donation

Australian Organ Donor Register

Register your decision to be an organ or tissue donor after you die to save the lives of other people. Call the register from Monday to Friday between 8.30am to 5:00pm.

T: 1800 777 203

W: <https://www.servicesaustralia.gov.au/australian-organ-donor-register>

Donate Life WA

Registering to be an organ and tissue donor is easy and you can submit a new registration and check if you are already registered.

T: 1800 950 155

Address: Hawthorn House, 100 Flinders Street, Mt Hawthorn WA 6016

Post: PO Box 332, Northbridge WA 6865

E: donatelife@health.wa.gov.au

W: <http://www.donatelife.gov.au/register-donor-today>

Sir Charles Gairdner Hospital WA On-call Donor Coordinator

The Sir Charles Gairdner Hospital has a 24 hour on-call Donor Coordinator. Ask to speak with the On-Call Organ and Tissue Donor Coordinator.

T: 08 6457 3333

W: <https://www.scgh.health.wa.gov.au/About-Us/Contact-Us>

ADVANCE CARE PLANNING

Advance Care Planning gives you the opportunity to plan for your future health needs if you become unable to make or communicate your own preferences.

To make legal medical decisions you must have decision-making capacity. If an injury or illness prevents you from being able to make decisions about your health care, an Advance Care Plan ensures that your wishes are followed even though the Advance Care Plan is not a legally binding document.

Who will represent you if you are unable to make decisions on your own behalf?

If you become unable to make your own decision, a substitute decision-maker will make decisions on your behalf.

The decision-maker is the first of the following who is willing and able to make decisions on your behalf:

1. An Enduring Guardian appointed by you.
2. A Guardian appointed by the State Administrative Tribunal (State Administrative Tribunal).
3. The first of the following, as identified by the medical practitioner or as made known to the medical practitioner:
 - The spouse or de factor partner
 - The nearest adult child
 - The nearest parent
 - The nearest sibling
 - Another adult with a close person relationship to you

Advance Health Directives

Advance care planning can involve making an Advance Health Directive (AHD). An Advance Health Directive is a legally recognised document governed by the *Guardianship and Administration Act 1990*.

The *Guardianship and Administration Act 1990* recognises that people who are not capable of making reasonable judgements for themselves may need someone to make decisions for them, not only to ensure their quality of life is maintained, but also to protect them from the risk of neglect, exploitation and abuse.

To view the *Guardianship and Administration Act 1990* go to:

https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtile_406_homepage.html

What is an Advance Health Directive?

An Advance Health Directive provides an instructional directive with legally binding instructions about the future medical treatment you consent to or refuse. If you do not have an Enduring Power of Guardianship in place, then an Advance Health Directive allows you to appoint an enduring guardian.

An Advance Health Directive records a competent adult's decisions about possible future treatment.

Treatment decisions recorded in a valid Advance Health Directive must be followed in circumstances when you can no longer make or communicate the decisions on your own behalf.

Treatment includes medical, surgical and dental treatment, palliative care and other health care. You can make an Advance Health Directive in which you either agree to or refuse consent for future treatment.

When does an Advance Health Directive come into effect?

The 'Advance Health Directive' comes into effect at any time you are unable to make a reasonable judgement about a treatment decision, for example, you become unresponsive after a serious accident.



What are the formal requirements to make an Advance Health Directive?

The Advance Health Directive is dependent on you:

- Being over the age of 18 years
- Having decision-making capacity at the time of making the Advance Health Directive to act on your own behalf
- Understanding the nature of the treatment decision being made and its consequences
- Making the Advance Health Directive voluntarily and not as the result of inducement or coercion
- Being encouraged to seek legal or medical advice

You have legal capacity if you are capable of understanding the nature, purpose and consequences of the medical treatment over which you are making the decision.

The Advance Health Directive must:

- Be in the prescribed form or substantially in the prescribed form
- Be signed by you or someone directed to sign by you in your presence
- Be witnessed by two (2) people who are over 18 years of age, one of whom is authorised to take declarations such as a Justice of the Peace
- You and each witness must sign the Advance Health Directive in each other's presence

For further details about witness requirements contact the Office of the Public Advocate WA

T: 1300 858 455

Address: 23 David Malcolm Justice Centre, Perth WA 6000

E: opa@justice.wa.gov.au

W: <https://www.publicadvocate.wa.gov.au/>

What is an invalid treatment decision under an Advance Health Directive?

An **invalid treatment decision** under an Advance Health Directive occurs when:

- It was made involuntarily, e.g., if you were pressured by someone to make the treatment decision
- It was made as a result of inducement; for example, if you were told that they or another person close to you would receive some financial benefit if you agreed to make the treatment decision
- It was made as a result of coercion; for example, if you were told that your family would only continue to care for you if you agreed to make a treatment decision
- At the time that you made it, you did not understand the treatment decision; for example, if you made a treatment decision and you did not know what it involved or what the risks of the treatment were
- At the time that you made it, you did not understand the consequences of making the treatment decision; for example, if you did not understand that the treatment you refused consent for was necessary to save your life

If there is any doubt about the validity of your Advance Health Directive or a treatment decision in your Advance Health Directive, an application can be made to the State Administrative Tribunal for determination of validity.

State Administrative Tribunal

The State Administrative Tribunal can be contacted for information and advice on applications for Guardianship, Administration, Enduring Powers of Guardianship, Enduring Powers of Attorney and Advance Health Directives.

Address: Level 6, State Administrative Tribunal Building, 565 Hay Street, Perth WA 6000

T: 08 9219 3111

E: sat@justice.wa.gov.au

W: www.sat.justice.wa.gov.au

How are treatment decisions made if a person does not make an Advance Health Directive?

If you do not make an Advance Health Directive, and you become incapable of making decisions, the treatment decision will be made on your behalf by the first person in the hierarchy of decision-makers.



Who can witness a person's Advance Health Directive?

Examples of people who can witness a person's Advance Health Directive are:

▪ Academic (post-secondary institution)	▪ Local Government Councillor
▪ Accountant	▪ Loss Adjuster
▪ Architect	▪ Marriage Celebrant
▪ Australian Consular Office	▪ Member of Parliament
▪ Australian Diplomatic Officer	▪ Midwife
▪ Bailiff	▪ Minister of Religion
▪ Bank Manager	▪ Nurse
▪ Chartered Secretary	▪ Optometrist
▪ Chemist	▪ Paramedic
▪ Chiropractor	▪ Patent Attorney
▪ Company Auditor or Liquidator	▪ Physiotherapist
▪ Court Officer	▪ Podiatrist
▪ Defence Force Officer	▪ Police Officer
▪ Dentist	▪ Post Office Manager
▪ Doctor	▪ Psychologist
▪ Electorate Officer of a Member of State Parliament	▪ Public Notary
▪ Engineer	▪ Public Servant (Commonwealth or State)
▪ Industrial Organisation Secretary	▪ Real Estate Agent
▪ Insurance Broker	▪ Settlement Agent
▪ Justice of the Peace	▪ Sheriff or Deputy Sheriff
▪ Landgate Officer	▪ Surveyor
▪ Lawyer	▪ Teacher
▪ Local Government CEO	▪ Tribunal Officer
▪ Local Government Deputy CEO	▪ Veterinary Surgeon

Do you need medical or legal advice to make an Advance Health Directive?

You are not required to obtain, but encouraged to seek medical or legal advice when making an Advance Health Directive.

It may be useful to do so, in order to ensure that all possible options have been considered in your best interests.

In the event that there is later uncertainty about your Advance Health Directive, the person who provided you with medical or legal advice may be able to assist in ensuring your treatment decisions are respected.

Can you change or withdraw your Advance Health Directive?

You can change or withdraw your Advance Health Directive if you have full legal decision-making capacity.

For further information in relation to revoking your Advance Health Directive please contact the Advance Care Planning telephone support line.

T: 08 9222 2300

Address: Department of Health 189 Royal Street, East Perth WA 6004

E: acp@health.wa.gov.au

W: www.health.wa.gov.au/advancecareplanning

How do you make an Advance Health Directive?

You can make an Advance Health Directive using the following methods.

1. To make an Advance Health Directive, you must complete the relevant form that is specified in the Guardianships and Administration 2005 Regulations.

Go to: Office of the Public Advocate and download for free the **Advance Health Directive Form**:

<https://ww2.health.wa.gov.au/~media/HWA/Documents/Healthy-living/End-of-life/Advance-Health-Directive.pdf>

2. To make an Advance Health Directive, you can also see the booklet: **A Guide to making an Advance Health Directive in Western Australia** to help you through the process.

Go to: Department of Health and download for free the booklet: **A Guide to making an Advance Health Directive in Western Australia**:

<https://ww2.health.wa.gov.au/~media/HWA/Documents/Healthy-living/End-of-life/AdvanceHealthDirective-Guide.pdf>

You can also order the form and workbook by calling or emailing:

T: 08 9222 2300

E: acp@health.wa.gov.au

For further details about Advance Health Directives

Department of Health WA

T: 08 9222 2300

Address: P.O. Box 8172 Perth Business Centre, Perth WA 6949

E: acp@health.wa.gov.au

W: www.health.wa.gov.au/advancecareplanning

State Administrative Tribunal

The State Administrative Tribunal can be contacted for information and advice on applications for Guardianship, Administration, Enduring Powers of Guardianship, Enduring Powers of Attorney and Advance Health Directives.

Address: Level 6, State Administrative Tribunal Building, 565 Hay Street, Perth WA 6000

T: 1300 306 017

E: sat@justice.wa.gov.au

W: www.sat.justice.wa.gov.au

VOLUNTARY ASSISTED DYING

Voluntary assisted dying in WA is governed by the *Voluntary Assisted Dying Act 2019*.

The *Voluntary Assisted Dying Bill 2019* was introduced to the Parliament of Western Australia on 7 August 2019 by the Minister for Health, Roger Cook and passed on 19 December 2019. The *Voluntary Assisted Dying Act 2019* became operative on and from 1 July 2021.

The purpose of this Act is to provide for and regulate access to Voluntary Assisted Dying and to establish the Voluntary Assisted Dying Board.

Voluntary Assisted Dying

To view the *Voluntary Assisted Dying Bill 2019* go to:

https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a147242.html

What are the eligibility criteria to access Voluntary Assisted Dying in WA?

The eligibility criteria to access Voluntary Assisted Dying in Western Australia is located at Section 16 in the *Voluntary Assisted Dying Bill 2019*.

To access Voluntary Assisted Dying you must, under Section 16 of the Bill:

- Be aged 18 years old and over
- Be an Australian citizen or permanent resident of Australia who has been ordinarily resident in WA for a minimum 12 months
- Be diagnosed with at least 1 disease, illness or medical condition that is:
 - Advanced, progressive and will cause death
 - Will on the balance of probabilities cause death within 6 months (or 12 months for neurodegenerative diseases)
 - Is causing suffering that cannot be relieved in a manner that you consider tolerable
- You must make three (3) separate requests: a first request, a written declaration and a final request
- Have decision-making capacity in relation to voluntary assisted dying
- Be acting voluntarily and without coercion

- Have an enduring request for access to Voluntary Assisted Dying

Further, to access Voluntary Assisted Dying you must meet the following under Sections of the Bill:

- Make the first request to a registered medical practitioner: Section 18
- Participate in two different assessments by two different medical practitioners (who must have undergone mandatory training) to assess your eligibility: Sections 24-41
- Upon completion of the two different assessments, be informed of your diagnosis and prognosis, the treatment options available to you (including palliative care), and the potential risks and expected outcome of voluntary assisted dying: Sections 27, 30, 38
- Make a written declaration which must be witnessed in the presence of two (2) people: Sections 42, 44
- Health practitioners are able to refuse to participate for any reason (including conscientious objection): Section 9
- The voluntary assisted dying substance may be through self-administration or practitioner administration: Sections 56, 58, 59

Can Healthcare Workers initiate a conversation about Voluntary Assisted Dying in WA?

Under Section 16 of the *Voluntary Assisted Dying Bill 2019* a healthcare worker (for example, a doctor or nurse) cannot initiate a conversation, or in substance suggest about voluntary assisted dying in Western Australia to you. However, a healthcare worker may initiate a conversation with you about palliative care and treatment options available to you.



For further details about Voluntary Assisted Dying in WA

If you want to talk to someone about Voluntary Assisted Dying, contact the WA Voluntary Assisted Dying State-wide Care Navigator Service. This is a free service established to assist all Western Australians with any aspects of Voluntary Assisted Dying.

The WA Voluntary Assisted Dying State-wide Care Navigator Service (SWCNS) is available to provide support to anyone involved with voluntary assisted dying in WA. This includes patients, the family and carers of patients, members of the community, health professionals and service providers. The service is nurse-led and staffed by Care Navigators who are experienced health professionals. The State-wide Care Navigator Service does not charge fees for its services.

WA State-wide Care Navigator Service

T: 08 9431 2755

Address: P.O. Box 8172 Perth Business Centre, Perth WA 6949

E: [Voluntary Assisted Dyingcarenavigator@health.wa.gov.au](mailto:VoluntaryAssistedDyingcarenavigator@health.wa.gov.au)

https://ww2.health.wa.gov.au/Articles/U_Z/Voluntary-assisted-dying/Statewide-Care-Navigator-Service

To access the information sheet: 'What is the Western Australian Voluntary Assisted Dying State-wide Care Navigator Service?' go to:

<https://ww2.health.wa.gov.au/~media/Corp/Documents/Health-for/Voluntary-assisted-dying/Care-Navigator-Service.pdf>



LEGAL RESOURCES

If you would like more information or guidance on anything discussed in this guide, you can contact the Seniors Rights and Advocacy Service.

Older People's Rights Service (OPRS)

The Older People's Rights Service (OPRS) comprises of a senior lawyer and nurse advocate team. The service is funded through the Department of Communities to provide legal advice, information and support to older adults who are at risk of or are experiencing elder abuse in the Perth Metropolitan and City of Mandurah area.

Elder abuse can be physical, financial, psychological, social, and sexual and/or neglect, it is a very complex area that can cause distress with finances, relationships, physical health, mental health and quality of life.

How can the Older People's Rights Service (OPRS) help?

The service provides a monthly outreach clinic to the Southern Communities Advocacy, Legal and Education Service (SCALES) in Rockingham. Outreach services can also be provided to clients within their own home or other suitable environments whereby they meet the outreach criteria.

OPRS focuses on empowering older adults in their decision making by providing relevant advice, information, education and support. In addition, calendars, brochures and support materials are produced to assist older adults in contacting services that can help them.

To access a lawyer at Older People's Rights Service (OPRS)

T: 08 9440 1663

Address: Mirrabooka, 10 Cobbler Place, Mirrabooka WA 6061

Address: Joondalup, Building 1, Edith Cowan University, 270 Joondalup Drive, Joondalup WA 6027

E: info@nsclegal.com.au

W: <https://www.nsclegal.org.au/>



Elder Rights WA (ERWA)

Elder Rights WA (ERWA) is a holistic legal service for seniors and the aged based in the Civil Law Division of Legal Aid WA.

The ERWA legal team provides legal advice, assistance and representation on certain types of legal matters and our social work team provides a range of tailored social work support in assisting clients in dealing with social, physical and mental challenges.

Who can use the Elder Rights WA (ERWA) service?

The ERWA team of lawyers and social workers provide a state-wide service for vulnerable seniors who are experiencing certain types of legal problems.

ERWA clients are people who are 65 years and older and First Nations and Culturally and Linguistically Diverse clients who are 55 years and older.

ERWA can also provide information and referrals to 'third parties' such as adult children or carers of the older person. However, they will not provide advice to third parties in most cases.

Who provides the Elder Rights WA service?

Lawyers and social workers with specialist experience in laws and issues that affect older Western Australians.

Where is the Elder Rights WA service located?

The ERWA team is primarily based in Perth, with the state-wide service also accessible through 9 regional Legal Aid WA offices, as well as a network of 16 Virtual Offices in metropolitan Perth and the regions.

They also have an Elder Rights WA lawyer from Peel Community Legal Services who provides their services in the Peel Region, as Peel has one of the highest proportion of seniors in WA.

They provide advice by telephone, virtual office, face to face and through community outreach.

What is the cost the Elder Rights WA service?

Elder Rights WA provides free legal advice.

What types of legal matters does Elder Rights WA cover?

Legal advice and information on matters relating to planning for the future, including:

- Enduring Powers of Attorney
- Enduring Powers of Guardianship

- Advance Health Directives
- Wills

Note: While the ERWA service does not prepare or write these documents, the advice provided at their service is very valuable in helping their clients to make appropriate decisions.

Other matters ERWA can give advice about include:

- Loans given to adult children or others
- Money or debts owed by clients
- 'Granny flat' arrangements or other shared living arrangements
- Problems arising from living arrangements, including when adult children move in and refuse to leave
- Guarantors for loans/mortgages for adult children
- Violence, including physical, psychological, emotional and sexual abuse
- Guardianship and Administration matters at the State Administrative Tribunal
- Voluntary Assisted Dying laws

Other ERWA services include:

- Representation in certain Guardianship and Administration matters in the State Administrative Tribunal
- Information and community legal education
- Referrals to specialist units within Legal Aid WA including Family Dispute Resolution Services and Domestic Violence Legal Unit

How can the Elder Rights WA service be accessed?

The Legal Aid WA website has information, videos and self-help guides on a range of legal topics. If they cannot advise or assist on a particular issue, they may refer you to an appropriate service.

To access Elder Rights WA (ERWA)

T: 1300 650 579 Legal Aid WA Infoline

E: elderrightswa@legalaid.wa.gov.au

W: <https://www.legalaid.wa.gov.au/>



CONCLUSION

In this Guide, we have attempted to outline the major legal issues you are likely to encounter as you grow older. In doing so, we have offered a brief explanation of their importance together with a number of resources to help you understand them and guidance to obtain further information.

As with all of our Guides, the information we present is not new and is publicly available: the value of them lies in their accessibility and the fact that all of the crucial information is presented in one resource to save you having to search to find it.

It is worth re-emphasising that because the issues referred to in this Guide are all underpinned by law, we advise you to seek a legal opinion (which may be offered free of charge to seniors) to ensure that whatever initiative you are undertaking, fulfils the requirements of the specific law to avoid legal challenges and possible disruption to fulfilling your actual wishes.

This is also important because the information in this Guide may be out of date as the Western Australian Government implements law reform and policy changes. For current information, visit the websites listed in this Guide that have additional materials and fact sheets.

As with all of our Guides, we hope that you and your loved ones find this one useful, easy to read and comprehensive.



About Council on the Ageing Western Australia

Council on the Ageing (WA) Inc. [COTA (WA)] was established in 1959 as the peak body representing the interests of people aged over 50 in Western Australia.

As a member of the COTA Federation, COTA (WA) collaborates with the other state COTAs as well as COTA Australia to advocate and influence (on a state and national level) on matters that are important to older Australians. In June 2021, the COTA Federation launched the second comprehensive national study of Australians aged 50 and over. Titled State of the (Older) Nation 2021, the second national survey is available via: www.stateoftheoldernation.org.au

COTA (WA) was formally appointed by the State Government as the first ever Vulnerable Seniors Peak in Western Australia.

COTA (WA) represents the interests of Western Australia's seniors on many advisory committees and reference groups. Our advocacy work includes collaboration with sector partners on issues such as health, elder abuse, affordable housing, mature age employment and vulnerable cohorts including First Nations People, Culturally and Linguistically Diverse (CaLD) and LGBTQI communities.

COTA (WA) delivers the following programs:

- Strength for Life™

Publications currently in circulation are:

- The At Home Guide
- The Goodbye Guide translated to Simplified Chinese, Vietnamese, Polish, Italian and Greek
- Understanding the Mistreatment of Older People
- The Interruptions to Daily Living Guide translated to Simplified Chinese, Polish, Italian and Greek
- Let's Make it Legal Guide

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