



# Guide to granny flat rights

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# Guide to granny flat rights

**Granny flat rights are quite complex so it's essential to understand and consider the tax and estate planning issues, as well as the social security and aged care implications and opportunities.**

## Introduction

Most clients have an overwhelming preference to stay in their family home for as long as possible. However, there may come a time where accommodation needs change, or a greater level of ongoing support is required.

Family members take on some degree of responsibility for providing support to ageing relatives, which may occasionally involve co-living arrangements.

Sometimes, the arrangement involves the transfer of significant levels of assets from the elderly person, in recognition of the support to be provided to them, or to cover the costs of any home modifications or construction required to provide the required care and accommodation.

Where certain conditions are met, transfers of cash and/or other property under a granny flat arrangement are not assessed under social security deprivation rules. Further, because certain aged care fees are calculated based on income and assets (assessed under the social security rules), a granny flat right may reduce future aged care fees. Generally, where a social security recipient engages in gifting, the deprivation rules apply. This may cause unfavourable or unexpected social security outcomes.

What is often not discussed or formalised are details that relate to:

- specific expectations of parties involved
- an agreement on what would occur if either party wanted or needed to unwind the arrangement
- changes relating to increased care needs
- the impact of the arrangement from a social security and aged care perspective, and
- the impact on estate planning arrangements.

## The advice opportunity

Generally, decisions to change an individual's accommodation, particularly where it relates to a loss of mobility or independence, are not made lightly. It can be an emotional time and choices may be made without considering the broader long term implications.

When assessing whether a change in accommodation should include the transfer of significant amounts of wealth, consideration should be given to more than just the favourable potential future Centrelink and aged care fee outcomes. Where circumstances deem it appropriate, a granny flat right may provide an opportunity to consider longer-term strategic planning opportunities.

Establishing a 'granny flat right' may provide much-needed support and care for elderly family members, while ensuring some independence is retained. A granny flat right could also help an ageing client to retain or improve social security entitlements, while transferring wealth without triggering the deprivation rules. In addition, this may assist in managing the costs if they enter residential care in the future. However, significant care is required to ensure that all implications are considered before entering into a granny flat arrangement.

This includes the:

- impact on social security entitlements
- ability to meet future aged care costs
- estate planning considerations, and
- tax consequences.

This guide outlines the key rules, considerations and planning opportunities when establishing a granny flat right.

### Advice tip

As a financial adviser, the end-to-end process associated with implementing a granny flat arrangement requires working with your referral network. It is crucial to have an awareness of the key elements and to potentially help 'connect the dots' between each advising professional involved in the process.

Often, legal advice is provided without a comprehensive understanding of other aspects such as social security implications. Therefore, joint meetings with other professional advisers may be very helpful in achieving positive client outcomes.

This level of engagement can provide significant value to clients in terms of both navigating the process and ensuring the overall appropriateness of the arrangement from a broader perspective.

## What is a granny flat right?

A granny flat right is an arrangement under which a person is provided a legal right to occupy a property. Although the term 'granny flat' is generally recognised in real estate to mean a separate physical structure, a granny flat right has a different meaning in this context. To establish a granny flat right, an individual (referred to hereafter as the 'client') transfers cash and/or other assets to another person, in return for a legal right to occupy a dwelling provided by that person. While granny flat arrangements are generally entered into between family members, this is not a requirement.

**Note:** A granny flat right is not established where the client has legal ownership of the dwelling in part or in full (appears on the title). This is because the client has a right to occupy the dwelling due to legal ownership.

## How is a granny flat right established?

A granny flat right can be established in a variety of ways. Broadly, these can be considered in three main categories:

- title of existing main residence of the client is transferred - right to reside retained
- cash and/or other assets are transferred - right to occupy another dwelling provided, or
- a new dwelling is purchased in the name of another person or constructed on another person's land.

Some examples of various arrangements can be found in [Appendix A](#).

Depending on the way in which the arrangement is established and the nature of the agreement, the implications and considerations will differ in relation to:

- legal implications and the terms of the arrangement
- the social security outcomes
- tax issues and other costs involved, and
- estate planning considerations.

## The granny flat agreement

### Does the agreement need to be in writing?

There is no formal requirement that the arrangement be in writing in order for it to be recognised by Centrelink, but is required under tax law to be eligible for concessions in certain circumstances<sup>1</sup>.

In all cases, it is strongly recommended that the agreement and all relevant conditions are in writing, with the agreement executed under the guidance and advice of a specialist legal and tax professional.

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<sup>1</sup> Since 1 July 2021, CGT concessions are available to eligible granny flat right arrangements, which includes a requirement in writing. See page [10](#) for more information about CGT concessions.

## Who is involved in establishing the agreement?

All parties to the agreement should receive independent legal, tax and financial advice prior to entering into any arrangement. Although there are fees and costs involved in obtaining advice, it is crucial that clients understand why advice is needed. Things can go wrong in any family, regardless of how amicable things may be at the outset.

Solicitors cannot provide financial advice (without having the required qualifications and licences) and therefore their advice is unlikely to account for social security, aged care and tax implications. Therefore, the financial adviser and registered tax agent should work closely with the solicitor when drafting the terms of the agreement.

## What should the agreement cover?

The agreement should explicitly address the following issues:

- the requirement to provide accommodation and care in another dwelling, where the original home is sold
- requirements/standard of the accommodation provided (eg in a certain area or with certain features, such as single storey)
- whether or not the client is expected to make additional financial contributions to the maintenance of the dwelling
- any responsibility for payment of utility bills and insurance expenses
- what degree of care and support has been agreed to be provided and what will happen if care needs increase
- under what circumstances it is anticipated that the arrangement will come to an end, or when either party can terminate the agreement (for example, where the person needs full time residential care, where an adult child's relationship breaks down, or where a party to the agreement becomes ill, dies or undergoes a significant change in financial circumstances), and
- whether or not the client is entitled to receive any amount upon vacation of the granny flat.

## Important considerations

The following should be taken into account when determining the terms of a granny flat right:

- If moving in with an adult child, what is 'Plan B' if the child's relationship breaks down?
- What if the person with whom the granny flat right is established becomes ill, passes away or wants to sell the property?
- Can the client's other beneficiaries be catered for as desired, based on the client's remaining financial resources once the right is established?
- Should all family members be consulted, and their sentiment towards the arrangement be formally captured, to avoid future potential disputes?
- What level of care and support for the client has been agreed to?
- If the client's care needs increase and modifications must be made to the dwelling based on mobility and accessibility requirements, who will pay for this (and will this be assessed as deprivation should the client pay)?
- If the client needs residential aged care, how will care fees be paid?
- If the arrangement doesn't work out and the client voluntarily elects to terminate the granny flat right, will the client have any entitlement to be compensated for terminating the agreement?

## Social security implications

When considering the social security implications, the first step is to determine the value of the right. This will in turn determine:

- homeownership status
- assets test assessment
- whether or not deprivation applies, and
- whether Rent Assistance is payable.



## Value of a granny flat

Broadly, there are two methods for valuing a granny flat right:

- amount paid or value of asset/s transferred is accepted as the value of the right, or
- Centrelink/DVA determines the value using a formula-based method (the 'reasonableness test').

The accepted value relative to the total value of assets transferred also determines whether deprivation rules apply.

**Note:** [Appendix A](#) summarises some of the more common arrangements and the likely valuation method.

### 1. Where amount paid is the value

Generally, where the value of the granny flat right is 'easily identifiable', the amount paid (ie the value of the assets transferred) is accepted for social security purposes to be the value of the right. Common examples include where the:

- title of the client's existing home is transferred, the market value of the home is the accepted value
- client purchases a new dwelling in another person's name, the purchase price of the
- new home is the accepted value, or client pays for the construction of a separate structure on another person's property, the construction costs are the accepted value.

#### **Advice tip**

Where a client enters into one of the above arrangements and transfers additional cash or other assets, Centrelink determines the value of the right. Centrelink uses a formula that determines what amount is 'reasonable' payment for the interest, known as the 'reasonableness test' – see below.

#### **Example 1- Transfer of the property title**

Julie (aged 72) transfers the title of her principal home to her son, Jeremy, in return for a legal right to occupy the property. The market value of the property is \$800,000 and Jeremy paid for all expenses in relation to the transfer of the title, including Stamp Duty. No other assets were transferred.

The value of the granny flat interest is accepted by Centrelink to be \$800,000 and deprivation is not taken to have occurred.

If on the other hand, Julie transferred the title plus an additional \$15,000 in cash, Centrelink will apply the 'reasonableness test' to determine the 'value' of the granny flat interest, and to determine whether there is any deprivation.

### 2. Where the value is determined under the reasonableness test

The reasonableness test determines the maximum value of assets that can be transferred without triggering deprivation. The reasonableness test is applied in cases where:

- the true value of the interest is not clearly demonstrated or identifiable
- the value of the interest would ordinarily have been accepted as the amount paid except for the fact that the client transferred additional cash or assets (eg where the title of the client's existing home is transferred, in addition to a cash amount), and
- in circumstances where a person enters into multiple granny flat arrangements (see page [12](#)).

A common scenario where this test applies is in circumstances where the client moves into the existing dwelling of another person. This is because it is generally difficult, if not impossible, to separately 'value' one room of an existing home, or the living quarters dedicated to the person in whose favour the right is established.

### *Reasonableness test formula*

The formula multiplies an age-based conversion factor by the maximum annual rate of Age Pension payable to a couple (at the time the granny flat right is created). The couple rate is used regardless of whether the person is single or a member of a couple.

The reasonableness formula is:

#### **Combined annual partnered pension rate x conversion factor**

**Note:** The pension rate includes Basic Rate of pension plus maximum Pension Supplement and Energy Supplement.

The conversion factor<sup>2</sup> is based on the client's age next birthday (or age next birthday of the youngest member of a couple). Where the reasonableness test is used, the **value**<sup>3</sup> of the interest is the lesser of the:

- amount calculated under the reasonableness test, or
- total amount paid for the right (ie the value of all cash and assets transferred).

If the reasonableness test value is less than the total amount of assets transferred, the difference is a gift and deprivation rules apply to the amount exceeding gifting thresholds. If a deprived asset results, it is counted as a financial asset and deemed under the income test for five years from the date of transfer.

**Note:** This assessment applies both for determining social security entitlements and aged care fees.

Whether or not deprivation applies, and to what extent, is largely determined based on the nature of the arrangement and the assets transferred. Where, for example:

- title of a property is transferred plus additional assets transferred, or
- construction costs are paid to build a granny flat on someone else's property, plus additional assets are transferred

the value of the granny flat interest is taken to be the greater of the value of the:

- property for which title was transferred, or actual construction costs, or
- value of the reasonableness calculation.

If on the other hand, a person pays an amount for the right to reside in a person's existing dwelling, the value of the granny flat interest taken to be the lesser of the:

- amount paid, or
- reasonableness test amount.

Gifting and deprivation apply to any amount above the reasonableness test amount.

#### **Advice tip**

The ordinary gifting thresholds may be used to reduce the amount treated as a deprived asset. An individual (or members of a couple combined) can gift up to \$10,000 in a single year and up to a maximum of \$30,000 over a rolling five year period. Care should be taken to ensure that appropriate information is provided to Centrelink to reflect the arrangements that have been entered into. The examples in the table below demonstrate the social security implications if the reasonableness test applies to the amount transferred.

<sup>2</sup> Conversion factors are contained in Appendix B.

<sup>3</sup> *Social Security Act 1991* s1147

### Example 2 – Application of reasonableness test

Julie (from Example 1 – age 72) transfers \$50,000 to Jeremy in addition to transferring the title of her home valued at \$800,000. The value of Julie's granny flat interest would be determined as follows:

#### *Step 1: Determine reasonableness test value*

Combined annual partnered pension rate<sup>4</sup> x conversion factor

$$\$46,202^5 \times 15.01^6 = \$693,492.02$$

#### *Step 2: Compare reasonable value to the value of the real property transferred*

Because this arrangement involves the transfer of title of a property, and the value of the interest would have been accepted to be the value of the property but for the transfer of the additional \$50,000 cash, the accepted value of the granny flat interest in this case is the greater of the:

- amount calculated under the reasonableness test, and
- value of the property for which title was transferred.

In this case this the value of the granny flat interest is \$800,000, being the value of the property.

The additional \$50,000 cash gifted is assessed as a gift. Assuming Julie has not made previous use of the gifting thresholds, \$10,000 could be exempt from the deprivation rules under the allowable gifting threshold. If this is the case, only \$40,000 is assessed as a deprived asset<sup>7</sup> for five years from the date of the transfer.

**Note:** Care should be taken to ensure that any written agreement correctly reflects the amount paid for the interest and any amounts treated as a gift.

### Example 3 – Application of reasonableness test

Joe (aged 78) sells his home and enters into a granny flat arrangement with his daughter Sarah in September 2025. In July 2025, he gifted Sarah \$10,000 to assist her with costs of living.

Sarah grants her father a right to reside with her and her family in her family home. Joe transfers the full sale proceeds (ie cash) from his family home of \$780,000 to Sarah as consideration.

The value of the granny flat interest and any applicable deprived amount is determined as follows:

#### *Step 1: Determine reasonableness value:*

$$\$46,202^5 \times 10.70 = \$494,361.40$$

#### *Step 2: Determine value of granny flat right:*

Because there is no real property involved in this transaction (ie title is not being transferred, acquired, nor is any construction occurring), the value of the interest is the lesser of the:

- reasonableness value calculated, or
- value of any money and assets transferred.

The accepted value of the interest in this case is the value calculated under the reasonableness test of \$494,361.40. This means that the additional amount transferred of \$285,638.60 is a deprived asset as he already exhausted his gifting threshold for the financial year. Deprived assets are counted under the assets test and subject to deeming from the date of the gift (in this case the transfer of cash and establishing the granny flat right).

<sup>4</sup> Includes Basic Rate of pension plus pension supplement and Energy Supplement.

<sup>5</sup> Based on rates as at 20 September 2025.

<sup>6</sup> See [Appendix A](#) for current Conversion Factors.

<sup>7</sup> Assumes the \$10,000 per income year and the \$30,000 five-year gifting thresholds have not been used up



## Broader social security implications

Once the value of a granny flat interest (or prospective interest) has been determined, the next step is to consider the broader social security implications. The accepted value of the right determines whether the:

- amount paid for the right is an assessable asset
- person is a homeowner or non-homeowner, and
- person is eligible for Rent Assistance.

The value of assets or funds transferred to establish the granny flat right is called the 'entry contribution' (EC). The EC value is compared to the 'Extra Allowable Amount' (EAA). The EAA is the difference between the homeowner and non-homeowner asset test threshold to qualify for a full pension and indexes on 1 July each year. In 2025/26, the **EAA is \$258,000**.

The table below summarises the social security outcomes based on the EC paid relative to the EAA. The relevant values are as at the time of establishment of the right.

If	EC assessable?	Homeowner?	Rent assistance <sup>8</sup>
EC > EAA	No	Yes	Not payable
EC ≤ EAA	Yes	No	May be payable

### 3. Main residence sold to establish a granny flat

A client may sell their home with the intention of using part or all of the proceeds to establish a granny flat right. The proceeds may receive favourable social security treatment for a period of time prior to the establishment of the right. This is summarised in the following table.

Amount intended for establishing granny flat right is:	Client is considered:	Rent Assistance:
> EAA	A homeowner. The amount intended to establish the granny flat right is an exempt asset and deemed at the lower deeming rate for up to 24 months <sup>9</sup>	May be payable during exemption period.
≤ EAA	A non-homeowner from date home is sold. No exemption applies.	May be payable

Because the main residence is an exempt asset, selling the family home and entering into a granny flat arrangement may impact Age Pension entitlement, depending on the value of the sale proceeds, the value of the amount paid for the granny flat interest and the value of the EC relative to the EAA.

Generally, if a person moves to a granny flat arrangement and the former principal home is retained, the market value of the former home is assessed under the asset test and any net rental income is assessed under the income test.

#### Advice tip

It is important to remember that assets and cash transferred as consideration to establish a granny flat right legally become assets of the transferee. Any potential social security or aged care advantages should be weighed up against any estate planning issues, cash flow implications and the ability to fund future care costs.

<sup>8</sup> The client must pay a minimum level of rent before being eligible for Rent Assistance.

<sup>9</sup> This applies if sale date is on or after 1/1/2023 with possible extension up to 36 months. Prior to this date it was limited to 12 months exemption with an additional 12 months in certain circumstances.

## CGT and granny flat rights

Generally, CGT event D1 (creating contractual or other rights) happens when a person grants someone a right to occupy a property<sup>10</sup>. Since 1 July 2021, a CGT exemption<sup>11</sup> for the person granting the right (grantor) applies if certain requirements are met. This CGT concession encourages a granny flat right interest to be formally documented and to provide legal protection for all parties involved, including an older or disabled person, from financial abuse. Prior to 1 July 2021, it was thought that formal arrangements were avoided in many circumstances due to CGT implications for the grantor.

Other reasons that agreements are not documented may include:

- the legal costs involved in obtaining legal advice
- not appreciating that the value of legal advice in most cases offsets the cost, and
- not recognising the potential implications of not having a formal written agreement in place.

The CGT concession only applies where an agreement is in writing and is intended to act as an incentive for people to formalise these arrangements.

Under the exemption, a CGT event does not happen in relation to a granny flat right when the interest is created, varied<sup>12</sup>, or terminated.

### The requirements

This agreement must be between individuals. It must be in writing and state that the individuals are legally bound by the agreement. There are no specific terms required for the arrangement but it should at least include who the parties are to the agreement, the circumstances in which the arrangement can be varied or terminated and what happens when the arrangement is varied or terminated.

The agreement cannot be of a commercial nature. Whether an arrangement is commercial would require an assessment of the individual circumstances.

Issues that may be considered include the payment of rent, the amount paid for the right and how the amount paid is determined. Reasonable ongoing contributions to bills and maintenance may be acceptable, but payment of household costs alone are unlikely to be sufficient to indicate the arrangement is commercial in nature. The payment of rent at commercial rates may indicate the arrangement is of a commercial nature<sup>13</sup>.

For the grantor to be eligible for the CGT concession, the granny flat agreement must provide an individual with the right to occupy the dwelling<sup>14</sup> (in the agreement) for life.

The client must have:

- reached their Age Pension age, or
- a disability:
  - which requires assistance to carry out most day-to-day activities, and
  - the need for such assistance will continue for at least 12 months<sup>15</sup>.

The eligibility requirement relating to Age Pension age or disability is determined based on the circumstances at the time the agreement is entered into or varied. This means that there is no requirement that the client is permanently disabled.

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<sup>10</sup> TR 2006/14

<sup>11</sup> ITAA97 Subdivision 137-A

<sup>12</sup> A variation may be changing the property to which the agreement relates

<sup>13</sup> See 3.4-3.43

<sup>14</sup> Dwelling is defined in ITAA97 Subdivision 118-B and includes adjacent land, flat or home unit.

<sup>15</sup> There is no requirement that the disability is permanent however the 12-month period is designed to exclude short-term injuries with less than 12 month recovery time.

When the agreement is established or varied, the dwelling can either be owned by the individual providing the accommodation or there can be an agreement to acquire an ownership interest in a dwelling. This approach provides flexibility in situations such as where:

- a new property (eg bigger home) will be purchased
- the client's current home will be transferred to establish the interest, or
- the construction of a physical granny flat or other detached dwelling will be completed.

Although this exemption commenced on 1 July 2021, granny flat rights established prior to 1 July 2021 can be varied or formalised to allow the CGT concession to apply as long as all of the requirements are met.

#### **Advice tip**

Clients and all parties involved should ensure they understand all the implications prior to entering any arrangement and should obtain independent specialist tax advice. This includes tax implications beyond the granny flat interest, such as disposal of assets to fund the interest.

### **Additional costs**

Depending on the circumstances, the costs (both direct and indirect) may outweigh any net financial benefits of entering into a granny flat agreement. On the contrary, in other circumstances, any upfront financial costs may be well worth certain non-financial benefits derived.

Purely from a financial perspective, any projected uplift in social security entitlements and/or reduction in future (potential) aged care fees should be compared with costs of establishing the arrangement. This is also why the appropriateness of a granny flat arrangement should not just be determined simply based on future social security and aged care circumstances.

Potential costs may include:

- stamp duty
- land tax, and
- other incidental transfer costs.

It is highly recommended clients seek specific legal and tax advice on the implications relating to granny flat rights. Legal and tax advice should also be sought from all parties involved to understand how the establishment of the right may impact them from an estate planning and tax perspective at the time of creation and in the future.

### **Stamp duty**

Where a granny flat right is established via the transfer of title of a dwelling, stamp duty is generally payable<sup>16</sup>. In addition, where a person is going to move from their existing main residence and purchase another dwelling, stamp duty can be a considerable additional cost which must be factored in.

As stamp duty law is state based, it is recommended that the relevant Office of State Revenue be contacted to confirm the duty payable. In most cases, the only exemptions that apply for transfer of a primary place of residence between family members are under 'love and affection' clauses that apply in some jurisdictions for members of a couple.

### **Land tax**

Like stamp duty, land tax is regulated by the states. The relevant Office of State Revenue should be contacted by the parties to a granny flat arrangement to understand the consequences.

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<sup>16</sup> Limited exemptions may exist in some states and it is recommended that specific tax advice be obtained.

## Other considerations

### Vacating an interest

If the client vacates the dwelling in which the granny flat right was provided, Centrelink may review the client's circumstances to re-evaluate assessment of the arrangement. This generally occurs where the client vacates the dwelling within five years of establishment<sup>17</sup>.

If the circumstances indicate that the reason for vacating the interest could reasonably have been expected at the time the right was created, the value of the granny flat right is assessed under the deprivation rules for the remainder of the five year period.

This may be problematic if the application of the deprivation provisions results in the loss of the client's Age Pension (ie under the assets test, where the EC was exempt, but becomes assessable as a deprived asset). This also means aged care fees may increase considerably.

### Entering aged care

Generally where a client exits a granny flat interest to enter aged care, the granny flat right is deemed to have come to an end. Provided that Centrelink are satisfied that deprivation shouldn't apply as outlined above, the interest will cease for social security purposes.

When a client enters residential aged care, some of their aged care fees are determined based on their income and assets. A deprived amount is assessed as an asset for aged care fee purposes and deemed income on the amount is also assessed. This means that if deprivation is taken to have occurred, aged care fees may increase.

If the Age Pension was (compared to what was projected when establishing the right) the client's main source of cash flow, the ability to fund fees and other expenses may be impacted. Where the client has insufficient other resources to fund these costs, it can be quite problematic. The 'financial hardship' provisions for aged care purposes would generally not be applicable in this situation.

### Vacating the interest temporarily

Generally where a client vacates a granny flat interest temporarily within the first five years of establishment, it is possible to be absent from the property for up to 12 months (or two years in certain circumstances) without impacting the assessment of the arrangement.

### Multiple life interests

In some cases, it may be possible for a person to establish multiple granny flat interests without triggering the deprivation rules. However, this depends upon the circumstances, including:

- the total amount paid relative to the reasonableness test amount, and
- where the person spends the majority of their time.

If the total amount paid for all rights combined is less than the reasonableness test amount, there is no deprivation. An example of this may be where a client pays each of their adult children for multiple interests in each of their family homes and intends to move around to spend time with each.

However, if the total amount paid is more than the reasonableness test amount the:

- principal residence of the client is the home where the majority of time is spent, and
- amount paid for other life interests is considered a gift and deprivation may apply.

If an equal amount of time is spent between each granny flat right property, the most expensive granny flat right is treated as the client's principal home.

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<sup>17</sup> Where the dwelling is vacated within five years, a Complex Assessment Officer at Services Australia will review the circumstances to determine whether deprivation should apply.

## Strategy considerations

### Social security

Establishing a granny flat right could assist in reducing the pool of assessable assets for social security purposes. This may provide the benefit of:

- increasing a person's social security entitlements
- maintaining a higher level of social security entitlement when the person enters aged care, and
- managing future aged care costs.

However, the costs involved in establishing a granny flat right should be weighed against any projected benefits. Particularly where these 'benefits' are contingent on a future event (eg a move into aged care), the likelihood of the projected benefits coming to fruition should be carefully considered.

#### Advice tip

Where projected benefits include a reduction in aged care fees and retaining the Age Pension after entry to care, consideration should be given to how long a person is likely to be in residential aged care.

The former primary residence is exempt from the social security assets test for two years when a person leaves the home to enter care. Therefore, a substantial amount of the projected 'benefit' of transferring the title of the home under a valid granny flat arrangement may not be seen until after this two year period has elapsed. Given the average timeframes a person is in care, the question must be asked, what is the likelihood of realising these benefits?

This is why the sole reason for establishing a granny flat arrangement should not be for aged care and social security purposes.

#### Example 4 – Strategy considerations

Joe (70) lives in his own home in Sydney. The current market value is \$1,250,000. The property was originally purchased in 2002 as an investment property. Joe's registered tax agent calculates that a partial main residence CGT exemption will apply and Joe will pay capital gains tax of approximately \$94,000 if Joe transfers the title to his son, Grant, in return for a life interest. Some of the costs would include:

Stamp duty	\$50,762 <sup>18</sup>
Capital gains tax	\$94,000 <sup>19</sup>
Professional valuation fee	\$470 <sup>20</sup>
Conveyancer and transfer fees	\$980
Solicitor fee for advice	\$2,500
Accountant fee	\$1,500
<b>Total</b>	<b>\$150,212</b>

<sup>18</sup> Approximate calculation based on legislation and rates as at 1 July 2025.

<sup>19</sup> ITAA 97 s112-20 applies a 'market value substitution rule'. The market value of the CGT asset will be taken to have been received, despite having not received sale proceeds from the disposal.

<sup>20</sup> Given home is not being sold on the open market, a valuation would generally be required to enable an accurate calculation of CGT.



#### Example 4 – Strategy considerations (continued)

Because his main residence is currently exempt for social security purposes, Joe won't see any immediate increase in his Age Pension. However, in the future if he was to move into a residential aged care facility:

- he may maintain his Age Pension entitlement over the longer term
- he could reduce his means-tested fee, and
- depending on his other income and assets, he may qualify for additional Government subsidies (as a supported person) to assist with the cost of his care, but he also may have to pay interest on accommodation costs due to not being able to pay lump sum accommodation costs.

Joe should consider whether he is likely to have the cash flow required to maintain his lifestyle and support any future aged care costs in a preferred facility, including the impact of wait times.

If, on the other hand, he retains ownership of his family home:

- his entitlement to Age Pension would reduce to nil two years from the date he enters permanent residential care as the home becomes an assessable asset
- his aged care fees will be higher, and
- Grant, as sole beneficiary of his estate, would have two years to sell Joe's home, without incurring a CGT liability<sup>21</sup> after Joe's death.

Joe may consider selling his home after two years and paying a lump sum deposit for aged care to avoid paying interest on his accommodation costs. Assuming limited other assets/income, he may also receive a part Age Pension as the lump sum deposit is exempt for Centrelink purposes.

Ignoring any other reason Joe might have for considering a granny flat right, from a financial perspective, the strategy might not necessarily provide any advantage.

Based on current rates and thresholds, the 'breakeven' point would occur just over seven years after the date of future entry to care. That is, when comparing the financial (cash flow) costs and benefits of this strategy alone, for Joe, it is likely to be just over seven years after any future entry to care, that the strategy 'pays off' financially. This is based on the benefit of retaining a full Age Pension relative to the initial costs of establishing the right.

Even if we instead assume that Joe's home had always been his main residence and so no CGT would be payable upon transfer, the 'breakeven' point would still be four years after entry to aged care in the future. When compared to the average time spent in residential care, it is reasonable to assume that it is unlikely that Joe will live to see this strategy pay off, if it was recommended purely for social security and aged care fee purposes.

## Planning for future care needs

The agreement should make clear the rights and responsibilities of all parties to the agreement, particularly in the event that the care needs of the client change. The agreement may provide for a review of the arrangement regularly or when certain events happen so adjustments may be made.

Aged care costs can be significant. It is crucial that when a granny flat arrangement is entered into, the ability to fund future care costs is considered and planned for. For example:

- If the client vacates the granny flat to enter care, is any amount 'paid' to establish the right refunded?
- If the terms specify that a partial refund of the EC will be provided, is there a 'Plan B' if the amount is not immediately repaid?
- Will care costs be met by the other party to the agreement or other family members?
- Based on the client's financial position after paying the EC, do they have sufficient liquidity to pay future care costs and maintain their lifestyle?

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<sup>21</sup> Assumes property was not used as an investment property as at the date of Joe's death.

Often, reducing aged care fees at the 'cost' of transferring significant amounts of wealth may not be worthwhile. It may leave the client in a position where they are unable to fund care in their preferred facility.

## Estate planning

The establishment of a granny flat right may be a pre-estate planning strategy. It may:

- provide an early inheritance to a child or children
- direct assets to a particular family member (eg one child)
- direct assets away from a surviving spouse (to maintain social security purposes), or
- avoid certain assets becoming part of the person's estate.

As granny flat interests generally involve the transfer of significant amounts of wealth, consideration must be given as to how this impacts the client's overall estate planning strategy. Updates to the client's Will are likely to be required and it may be appropriate to consult the broader family and inform them of the terms of the agreement. Care should be taken as, under succession laws, certain individuals are able to contest an estate in circumstances where they believe inadequate provision has been made for them under the terms of a Will<sup>22</sup>.

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<sup>22</sup> Under the Notional Estate laws that operate in NSW, the estate of the deceased is extended beyond the actual assets legally owned by the person at the date of their death. The estate which may be challenged could effectively extend to any assets which the deceased had transferred to another individual prior to death.

## Appendix A: Social security valuation examples

Arrangement	Valuation	Does deprivation apply?
Client transfers title of their existing primary residence to another individual in return for a right to occupy that dwelling.	Value of property is value of granny flat right.	No
If above <i>plus additional assets</i> transferred.	Value of right is <u>greater</u> of: <ul style="list-style-type: none"> <li>reasonableness value, and</li> <li>the value of the property to which title was transferred.</li> </ul>	Yes – to any amount transferred above the accepted value.
Client provides capital for another person to purchase a new dwelling, in their name. Right to occupy new dwelling is provided.	Value of new property is value of granny flat right.	No
If above <i>plus additional assets</i> transferred.	Value of right is <u>greater</u> of: <ul style="list-style-type: none"> <li>reasonableness value, and</li> <li>the value of the new dwelling.</li> </ul>	Yes – to any amount transferred above the accepted value.
Client transfers cash or other assets.  Right to occupy room or area in that person's residence is provided.	Value of right is <u>lower</u> of: <ul style="list-style-type: none"> <li>reasonableness value, and</li> <li>total value of assets transferred.</li> </ul>	Yes – to any amount transferred above the accepted value.
Client transfers cash or assets to multiple individuals.  Right to occupy each person's dwelling on a rotating basis is provided.	<ul style="list-style-type: none"> <li>If the total amount transferred is less than the reasonableness test amount, value is the amount paid.</li> <li>If total amount paid is more than the reasonableness test amount, the home that most time is spent in is the principal home, and the amount paid for this interest is the value of the right.</li> </ul>	<p>If total paid for all rights is greater than the reasonableness limit, residence where most time is spent is treated as main residence. EC paid in respect of other dwellings are assessed under gifting/deprivation.</p> <p>If equal time spent in all dwellings, most expensive is main residence and other ECs are deprived assets.</p>
Client pays for construction of a granny flat structure on another person's property.  Right to reside in granny flat structure is provided.	Value of construction costs paid is accepted as value of right.	No
If above <i>plus additional assets</i> transferred.	Value of right is higher of: <ul style="list-style-type: none"> <li>reasonableness value, and</li> <li>actual cost of construction.</li> </ul>	Yes – to any amount transferred above accepted value.

## Appendix B: Reasonableness test conversion factors

The following factors are used when applying the reasonableness test. The relevant age is the client's age (or the youngest member of a couple) at their next birthday.

**Note:** If a person is over 100 years of age, the conversion factor for 100 years continues to be used.

Age next birthday	Conversion factor	Age next birthday	Conversion factor
51	33.94	76	12.78
52	33.02	77	12.07
53	32.09	78	11.37
54	31.18	79	10.70
55	30.27	80	10.04
56	29.37	81	9.41
57	28.47	82	8.80
58	27.57	83	8.21
59	26.69	84	7.65
60	25.80	85	7.11
61	24.92	86	6.60
62	24.05	87	6.13
63	23.18	88	5.68
64	22.33	89	5.26
65	21.48	90	4.87
66	20.64	91	4.52
67	19.80	92	4.19
68	18.98	93	3.89
69	18.16	94	3.63
70	17.36	95	3.40
71	16.56	96	3.19
72	15.77	97	3.01
73	15.01	98	2.86
74	14.25	99	2.72
75	13.50	100 or older	2.60