

Social security treatment of a granny flat interest

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With an ageing population, granny flat interests between parents and their adult children are becoming increasing popular. Such arrangements can be mutually beneficial and an excellent way to allow the elderly to remain in their home for as long as possible. It is important to understand the social security treatment of these arrangements before establishment.

For social security purposes, the term 'granny flat interest' is where a person 'pays' for a life interest or right to accommodation for life in a private residence that is to be the person's principal home.

While there is no special requirement to physically build a separate self-contained residence, the interest may include:

- the same building as the owner of the home
- a separate, self-contained building on someone else's land.

A 'granny flat interest' must be:

- For all or part of a private residence. If it's for part of a private residence, the person creating the interest must have a designated room or area that allows for their exclusive occupancy
- Your principal home

You can't have a granny flat interest in a property you legally own. This includes property that you, your partner' a trust or company you control owns.

The right only lasts for your lifetime. It's not part of your estate when you die.

Creating a granny flat interest

There are two ways to have a granny flat interest, either:

- life tenancy - the right to live in the property
- life interest - the right to use and benefit from the property as you wish.

With both kinds you need to be living there.

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There are also various ways to create the granny flat interest. For example:

- Maria transfers the title deed of her primary home to her daughter, Sofia, and receives a life right to live in the property in return.
- Angelo pays his son, Richard, $120,000 to construct a standalone building on one of his properties. Angelo receives a right to permanent accommodation in return.
- Vivienne pays $450,000 to her niece, Riann to purchase a new home. She moves into Riann's home, receiving a right to permanent accommodation.

Social security treatment

Depending on the circumstances, Centrelink/DVA may deem part of an amount transferred to another person in return for a granny flat interest as a gift. No gifting is deemed to occur when a person:

- transfers the title of their home and retains a lifetime right to live there or in another property
- pays to build a granny flat on someone else's property
- pays to convert someone else's home to suit their needs in return for a lifetime right to live there
- buying a property in someone else's name and getting a lifetime right to live there.

Per Maria's example of transferring the title of her principal residence (valued at $1.2 million) to her daughter, Sophia in return for a lifetime interest to live in the property, Centrelink will not apply deprivation to this transaction.

A reasonableness test applies if a monetary amount was paid by a person when establishing the granny flat interest. Centrelink use an actuarial based formula to determine whether the amount paid to create the granny flat interest was reasonable and whether an amount was gifted.

For more information on gifting and how it can impact social security entitlements, refer to 'Social security gifting rules?' fact sheet.

Home ownership status

Once you've established a granny flat interest, your Centrelink homeownership status is determined by how much you paid for the granny flat interest. If the amount paid (including value of assets transferred) is more than $258,000, you are considered a homeowner and the amount paid (excluding any deprived amount) is exempt from assets and income assessment. If the amount paid is less than $258,000 you are considered a non-homeowner and the amount paid will be assessed as an asset.

Importance of an agreement

As the person creating the interest does not have legal ownership to the property they live in, ensuring an agreement is written and signed by all parties can help ensure the interests of parties are protected. Details of an agreement can include:

- Description of the interest acquired, and assets transferred.
- Rights and obligations of parties involved, including payment of bills, fees, rent, maintenance, insurance and other property outgoings.
- Rights of the carer, describing what type of care is to be provided (if any).
- Conditions dealing with temporary vacancy such as
  - holidays or respite care.
  - Conditions whereby the agreement may end, including the refund of any amounts paid to create the interest if the agreement is terminated voluntarily or compensation where the property owner cannot maintain the interest.

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Wills and succession planning

Assets transferred to create an interest generally no longer form part of your estate (unless there is a refund mechanism in the agreement). Depending on the amount you pay for the granny flat interest, it could potentially significantly deplete your estate and may affect the inheritance of some of your beneficiaries. In the event that you enter into a granny flat arrangement with one of your children, you should discuss this with your other children before the agreement is made.

Furthermore, you should also review your overall estate planning position with a qualified professional before entering into a granny flat interest arrangement.

Capital gains tax consequences may also apply. Each party to the transaction should obtain independent legal, financial and tax advice before entering into an arrangement.

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