



# Legal Aid ACT

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## Gifts, loans and d e b t s



It's important to know **your rights and responsibilities**  
and what can go wrong when you help someone out financially.





# Legal Aid ACT

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Legal Aid ACT helps people in the ACT with their legal problems. We provide free initial advice and assistance on criminal, family, and civil matters, and ongoing assistance to people who cannot afford a private lawyer.

**Street Address:**

2 Allsop Street Canberra City ACT

**Postal Address:**

GPO Box 512 Canberra, ACT 2601

**Phone:** [02] 6243 3436

**Email:** [legalaid@legalaidact.org.au](mailto:legalaid@legalaidact.org.au)

**Website:** [www.legalaidact.org.au](http://www.legalaidact.org.au)

**This Fact Sheet is for anyone who would like to know more about your rights and responsibilities and what can go wrong when you help someone out financially.**



## Information for Older People

It is hard to see someone you care about struggling financially. Older people often get asked to help when other family members are in difficulty and it can be hard to say no. No matter how much you are able to give, it's important to know your rights and responsibilities and what can go wrong when you help someone out financially.

This Fact Sheet covers what you should think about when considering a loan or gift of money or other assets. It also covers going into debt for someone, being a guarantor on a property and providing security for a loan.

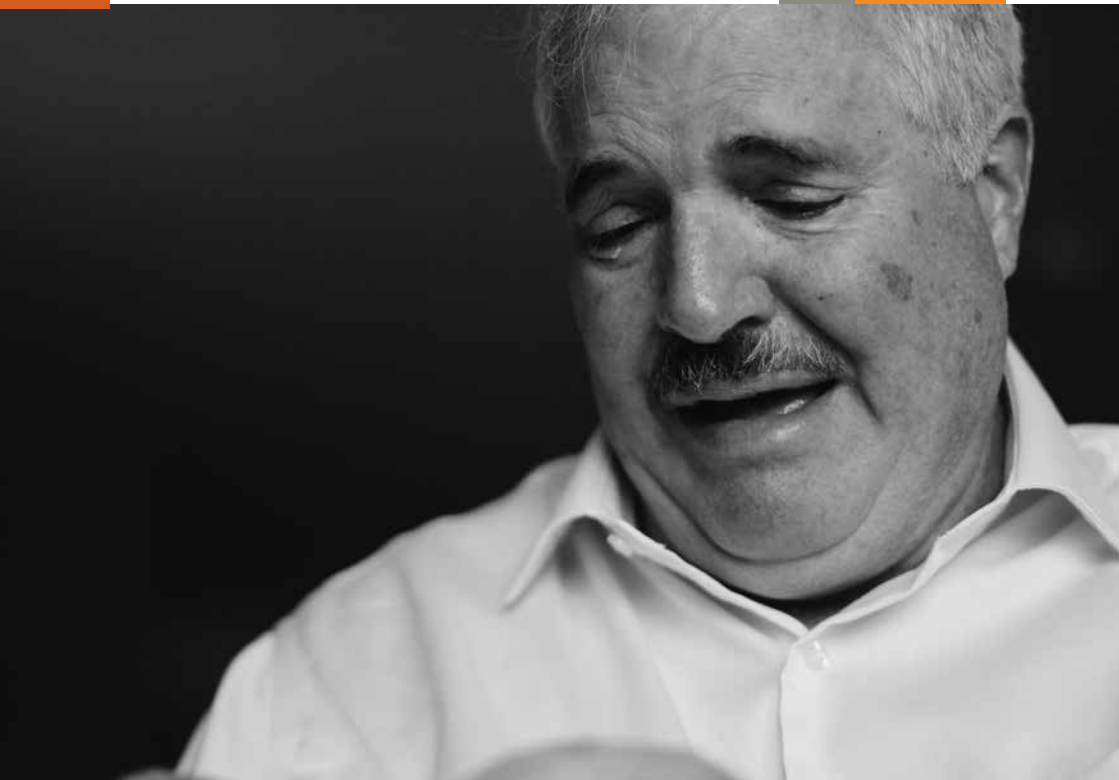


## **Don't risk your future**

At Legal Aid ACT, we know that sometimes people's efforts to help others financially have resulted in the devastating loss of their home and/or savings. In older age it can be impossible to recover from a financial loss, particularly if you are on a fixed income such as a pension.

## Before you agree to help someone out financially, ask yourself:

- How will I cope if I have to leave my home?
- Where would I live if things went wrong?
- How will I manage in an emergency if I don't have my savings?
- Who will pay if I need special treatment or services later on?
- How will this affect my relationship with my other children?
- Will this effect what I can leave to my children in my Will when I die?



## Understand the risk

Someone who is unable to get the money they need from a bank or other lender is probably considered too risky for a loan. Even if they are a family member ask yourself if you should take on this risk even if they are a family member. Think carefully about the person's spending habits, attitude towards money and their current circumstances. Even the most well-meaning and financially responsible of people can make mistakes. A relationship breakdown or losing a job can bring big changes to a person in a previously secure financial situation.

## Promises and threats

"I'll pay you back as soon as I get a new job."

"If you don't give us the money we'll have to move and you won't see the grandchildren anymore."

"If you love me you will trust me and just sign."

Don't be pressured into giving or lending money or signing documents. Legal Aid ACT can help you understand your rights.



## It's OK to say 'NO'

It can be difficult to say 'no' to someone you care about, especially if they are going through difficult times or are used to getting your financial support.

### Tips for saying 'no'

- Explain that you don't want to risk damaging the good relationship you have with them now
- Let them know you have the right to protect your interests and that it has nothing to do with your love or trust of them
- Give examples of what could go wrong, such as losing your home, and point out just how difficult it would be for you if this were to happen
- Encourage them to explore other options for managing the problem
- Encourage them to seek their own legal and financial advice.

### Worried about your safety or independence?

You can call:

Legal Aid ACT on  
[02] 6243 3436  
9am–4pm,  
Monday to Friday

or the Domestic  
Violence Crisis  
Service on  
[02] 6280 0900  
24hr/7 days a week

## Connie's story

I agreed to borrow some money on my credit card for my son and daughter in law to help them pay off some loans quickly. They promised it wouldn't cost me anything and they would make all the repayments. A few months later they split up and payments on 'my' loan stopped. Now it was me who had all the stress.

There was no way I could manage the additional repayments from my pension and when the letters and phone calls came in from the credit card company, the worry of it all was making me really sick.

It took months to sort out with the help of a lawyer and a financial counsellor. I wish I knew then what I know now, because as it turns out, if my son and daughter-in-law had gone to a financial counsellor in the first place, they could have got help without involving me.





## Think about your pension and entitlements

Giving away or lending money or other assets, including money raised by mortgaging or guaranteeing your home, may affect your Centrelink payments. It can also affect the fees you pay for aged care accommodation in the future.

Centrelink requires that you tell them about any gifts or loans. Amounts above the relevant thresholds could impact the Centrelink benefit you may be entitled to. Check with the Centrelink Financial Information Service for the current threshold amount and any other changes. You can also visit: [www.humanservices.gov.au/customer/enablers/assets](http://www.humanservices.gov.au/customer/enablers/assets)



Some older people give away money or assets because they believe it may help avoid taxes or reduce the cost of aged care fees or bonds. These arrangements can also backfire.

It's important to seek independent advice from a lawyer, financial adviser or Centrelink before considering any large gift or loan.

In the ACT you can obtain free financial counselling from CARE Financial Counselling and free legal advice on your social security benefits from Canberra Community Law. You can also contact Centrelink's Financial Information Service for assistance.

## **Plan and get advice before selling your home to move in with family**

Many older people choose to move in with family members to get the care and support they need as they age. Often this involves selling a home or other assets and giving the money to a family member who has agreed to provide ongoing care. If you are considering such a move, it is important to get advice about planning and securing your future interests before selling your property.

It is also important for everyone involved to talk about what they expect from the arrangement and how it may work in practice. A written family agreement can help ensure everyone understands the plan and may help avoid future conflict amongst family members.

## Think before you sign loan documents

There are a number of ways you may be asked to be involved in a loan for someone else's benefit. This may include using your home as security, taking out a mortgage or reverse mortgage\* on your home or transferring ownership or title in your home to someone else.

Loan and mortgage documents can be difficult to understand. Don't risk your future, get independent advice before you sign. Contact a lawyer, financial advisor or Legal Aid ACT.

\* A reverse mortgage involves borrowing money using the value of your home (equity) as security.

## Be clear – is it a gift or a loan?

When you give money or something valuable to another person, even a family member, it is important to make it clear in writing whether you intend what you give to be a gift or a loan and you expect to be repaid at some time.

A written agreement helps ensure both parties understand the deal and acts as proof in case there is any disagreement in the future. It can also make clear when and how you expect a loan to be repaid, if you expect any interest to be paid, and any other terms necessary to protect yourself. It's best to get independent advice regarding such an agreement. Contact a lawyer or Legal Aid ACT.

## Keep good records

As well as a written loan agreement, it's also important to keep clear records of when payments are made to you. Tracking loans and payments can prevent disagreements later.

Purchase a duplicate receipt book from a newsagency or stationery shop, so that both you and the person making the repayment can have a copy. Remember to include your names, the date and amount repaid and any receipt should be signed by both parties.



## Information and Resources

Emergency '000' information in the person's own language  
([www.triplezero.gov.au](http://www.triplezero.gov.au))

**Legal Aid ACT**  
**[02] 6243 3436**  
**9am–4pm Monday to Friday**  
**[www.legalaidact.org.au](http://www.legalaidact.org.au)**  
**Free legal advice and support services**

### Care Inc.

1800 007 007  
[www.carefcs.org](http://www.carefcs.org)  
A free financial counselling and consumer law service in the ACT.

### Canberra Community Law

(02) 6218 7900  
[www.canberracommunitylaw.org.au](http://www.canberracommunitylaw.org.au)  
A free community legal service in the ACT.

### Centrelink Financial Information Service (FIS)

13 2300  
[www.humanservices.gov.au/customer/services/centrelink/financial-information-service](http://www.humanservices.gov.au/customer/services/centrelink/financial-information-service)  
A free service to help you in making financial decisions, including how any gifts or loans you make may affect your pension.

## **COTA (ACT)**

(02) 6282 3777

[www.cotaact.org.au](http://www.cotaact.org.au)

COTA ACT is the peak organisation for all issues relating to older Canberra citizens, seniors, those of mature age and their families.

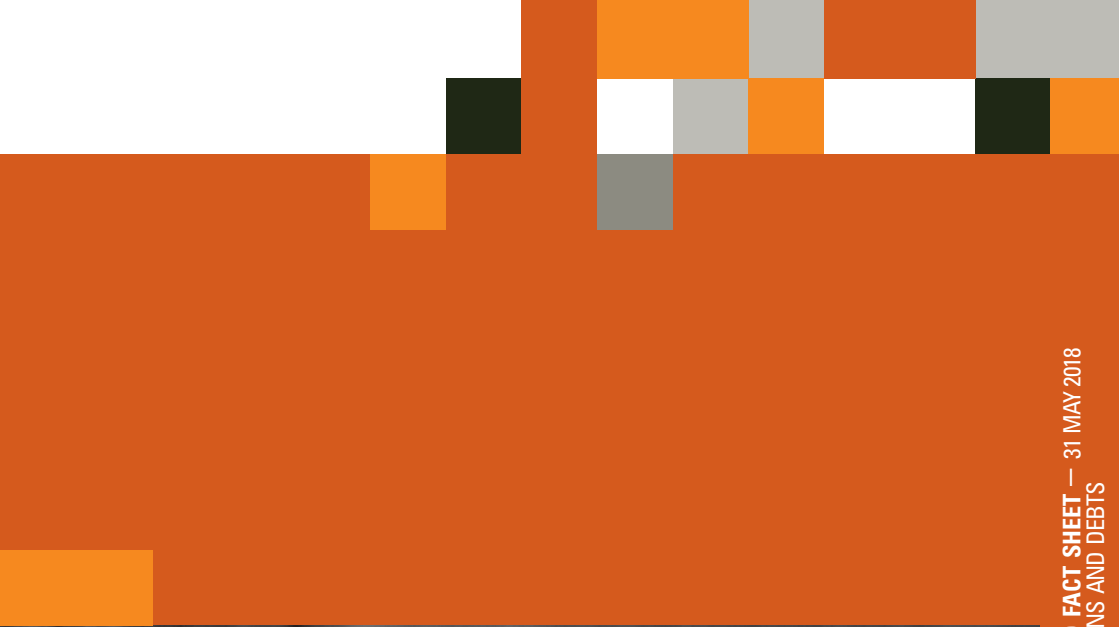
## **Money Smart**

1300 300 630

[www.moneysmart.gov.au](http://www.moneysmart.gov.au)

Helping people make money decisions.





LEGAL AID FACT SHEET — 31 MAY 2018  
GIFTS, LOANS AND DEBTS



IF YOU NEED HELP PLEASE CALL  
**[02] 6243 3436**

**FREE LEGAL ADVICE AND  
SUPPORT SERVICES**

**Legal Aid ACT**

