



They want me to leave

**Staying in your
home when your
partner dies**

Many older people live in homes that are legally owned by someone other than themselves and face eviction from that home when the owner dies.

Who owns your home?

You may live with a spouse or partner who has children from a previous marriage. The home you live in may be in your partner's name only.

You may find that when your partner dies, the adult children from his or her previous marriage want you out of the home you have been living in. This can happen if your partner has left a will leaving the home you live in to those children who then become the new legal owners of the property.

One of your own family members – such as a sibling - may own the home you have been living in your whole life and may leave that property to someone other than you in their will.

This can be very distressing if you have nowhere else to go or if you can't afford to live anywhere else.

This brochure tells you what you can do to avoid this happening to you. It also tells you what you may be able to do if it does happen to you or someone you know.

Prevention is better than cure

It is best to talk with your spouse, partner or family member about what might happen to you if the person who owns the home you live in dies.

Your partner may want to make sure the property is left to his or her children, but may not have thought about the fact that you could be left homeless after he or she dies. For example, they may intend that you remain in the home for the rest of your life, with their children only inheriting the property after you die, but they may not have updated their will to make sure that will happen. While these conversations can be difficult and so easier to avoid, they are very important to make sure that your interests are protected before it is too late.

If you are not sure what would happen you should talk to a lawyer.

The best of both worlds

You can take steps to make sure that your interests are protected without other people losing out on their inheritance. For example:

- Your name can be added to the certificate of title to the property as a **joint tenant**. This means that if your partner dies the property will automatically pass to you. You can then make a will which leaves the home to his or her children when you die.
- Your name can be added to the certificate of title to the property as a **tenant in common**. This means that you own a share of the property and your partner can only leave his or her share to the children. However they could still try to have the property sold and the proceeds of the sale shared between you.
- You can have a **life interest** registered on the certificate of title. This means that when your partner dies you will have the legal right to stay living in the home for the rest of your life or until you choose to leave.
- Your partner can state in their will that you may stay in the property for the rest of your life or for as long as you like. This is also called giving you a **life interest**, and means that their children will only inherit the property after you die, decide to leave or go into aged care.

A lawyer can advise you and your partner (separately or together) about the best option for you, your partner and other members of the family.

They want me out

If you and your partner have not discussed these issues, and your interests have not been protected, the law may be able to help if you are told you need to leave your home.

You may have what the law calls an 'equitable interest' in the property even if you are not the legal owner. You will have had to have made financial or other contributions to the property on the understanding that you would be able to live in the house for life, or be entitled to some money if the property was sold. You can ask the Supreme Court to order that your interest in the property be recognised and that you are financially compensated.

The law in this area can be complex and you would need legal advice before you considered legal action.

You may be able to challenge your spouse or partner's will. This is called a 'family provision claim' and must be made within 12 months of the date of death. The Supreme Court can change someone's will if it thinks that you were not properly looked after by their will. The Court will look at things like:

- any contribution you have made to the deceased person's property and welfare
- your age and any physical or mental disability
- your financial resources (including earning capacity) and your current and future financial needs.
- the nature and length of your relationship
- whether you were being financially looked after by your partner
- anything else the Court thinks is relevant.

Using the law in these ways is expensive and you can never be sure of the outcome, so it is far better to try to sort things out while the owner of the property is still alive.

Remember - prevention is better than cure, and less emotionally and financially costly.

A true story...

Eleni, 71, was married to Sy for 17 years. It was her first marriage but Sy's second marriage.

Sy had two adult children from his first marriage.

Sy owned the home in his own name. They had never talked about what would happen to Eleni if Sy died.

When he died Eleni discovered that Sy had made a will which left the house they shared to his two children in equal shares. His children decided to sell the house and told Eleni that she had four months to find somewhere else to live.

Eleni's only option was to start legal action to challenge Sy's will. If she had discussed her situation with Sy and a lawyer before Sy died, she may have been able to prevent this from happening.

Where can I get more help?

LawAccess NSW

Provides free telephone legal information and referrals to legal help, including to your nearest Legal Aid NSW office, Community Legal Centre, or private solicitors.

Tel: **1300 888 529** (cost of a local call)

TTY: **1300 889 529**

www.lawaccess.nsw.gov.au

Seniors Rights Service

Provides free legal advice and assistance for older people.

Tel: **1800 424 079** (toll-free)

www.seniorsrightsservice.org.au

Do you need an interpreter?



If you need help to talk to us in your language, call the Translating and Interpreting Service (TIS) on **131 450** (9am – 5pm).

Do you find it hard to hear or speak?

If you find it hard to hear or speak:



- call us through the National Relay Service on **133 677** or www.relayservice.gov.au or call
- LawAccess NSW on **1300 889 529**

This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing. However it may change. For more information contact LawAccess NSW on **1300 888 529**.

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