

## Personal factors Maria should consider:

- If Maria lends money to Peter, how will this affect her relationship with Markus?
- Does she have any legal right to see her granddaughter if Peter refuses to allow it?

The information contained in this publication is intended for use in NSW, and relates to the law as at 1<sup>st</sup> May 2010.

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*This publication is intended as a guide to the law and should not be used as a substitute for legal advice.*

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## Agencies and others Maria could contact for help and advice:

- ① The Older Persons' Legal Service (A service of The Aged-care Rights Service). Tel: (02) 9281 3600 or 1800 424 079 (toll-free)
- ① Financial Information Service (FIS). Tel: 132 300
- ① LawAccess NSW  
Tel: 1300 888 529. TTY: 1300 889 529
- ① Legal Information Access Centre (LIAC) (02) 9273 1558 or [liac@sl.nsw.gov.au](mailto:liac@sl.nsw.gov.au)  
Tel: 1300 888 529. TTY: 1300 889 529
- ① Welfare Rights Centre -  
Tel: (02) 9211 5300  
or 1800 226 028 (Toll free)
- ① Her solicitor. If Maria does not have a solicitor, she could contact the Law Society of NSW Solicitor Referral Service on (02) 9926 0300 for a list of solicitors in her area who deal with elder law matters.



## One Good Deed...

Legal and financial issues for older women considering gifts and loans



**Like most mums, Maria had always been ready to lend a hand. What was different this time?**

Maria had spent most of her life working at several jobs, whilst raising her kids as a single mother. Eventually she bought her own business in a carpet cleaning franchise...

When Maria finally sold her business she was able to buy her own home and had enough money left over for an investment property that would pay her a solid weekly income, promising a carefree retirement.

Maria also continued to provide generous financial support to her two sons, Peter and Markus. She paid the school fees for all three of her grandchildren and for music lessons and additional tuition.

When Peter was made redundant last month, he approached Maria for some financial assistance with his family mortgage. When Maria had her solicitor draw up a loan agreement, Peter was furious - he said this was unnecessary, and that it just proved she cared more about Markus. He also said that her actions could render his daughter, Emily, homeless and is refusing to let Maria see her granddaughter. He has not refused Emily's school fees for next term.

### Questions that Maria might ask:

**Q. How can I diplomatically explain to Peter that, this needs to be a loan and not a gift?**

**A.** Explain to Peter that your ability to assist depends on being able to carefully manage your financial assets.

Draw up with your solicitor a loan agreement incorporating a repayment plan that Peter can manage, and explain to Peter that his and Emily's future financial security also depends on this.

**Q. Should I insist on a written agreement?**

**A.** Yes. A written agreement is essential, as it will outline:

- how the money is to be repaid,
- when it is to be repaid, and
- whether any interest is to be paid.

A written agreement - signed by both of you and witnessed - will establish that the money you have given Peter is a loan, not a gift, an important point if there are any disagreements in the future.

**Q. If a problem occurs and Peter does not repay the money, what can I do?**

**A.** A loan agreement would enable you initiate formal negotiations to reschedule any outstanding repayments, or undertake legal action in the event that disagreements occur, or should Peter and his wife separate.

If this situation arises it is important that you seek legal advice as soon as possible, since there is a limitation period within which you would be entitled to begin legal proceedings.

**Q. How will this loan impact on the distribution of my estate upon my death?**

**A.** Having a loan agreement in place, specifying that the debt owed to you by Peter is to be repaid immediately upon your death will ensure that the loan will not impact upon the distribution of your estate.

**Q. What other arrangements can I make in case Peter is not in a position to repay the loan at the time of my death?**

**A.** It is important that your will outlines all aspects of your estate, including any loan agreement in place with Peter.

Your will could stipulate that any debt still outstanding by Peter under the loan agreement at the time of your death should be offset from Peter's share in the distribution of your estate. It is very important that you seek legal advice in the drawing up of your will to minimize any problems that could arise when your estate is distributed.