

- How important to May are her gardens? Can she get some community assistance to maintain them?
- May's local council could advise her of other services which might assist her in the future, should her family withdraw their support.

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.

Contact OWN NSW:  
phone: (02) 9247 7046  
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[www.ownnsw.org.au](http://www.ownnsw.org.au) to obtain further copies of this publication.

*This publication has been developed by The University of Western Sydney and The Older Women's Network NSW, produced with the financial assistance of the Law and Justice Foundation of NSW.*

*The Foundation seeks to advance the fairness and equity of the justice system and to improve access to justice, especially for socially and economically disadvantaged people.*

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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 May 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  
Tel: 1300 888 529. TTY: 1300 889 529
- ① Welfare Rights Centre -  
Tel: (02) 9211 5300  
or 1800 226 028 (Toll free)
- ① Aged & Community Services Association of NSW  
Tel: (02) 8754 0400
- ① Her solicitor. If May 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 property matters.



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## Safe as Houses?

Legal and financial issues for older women considering going Guarantor



**May has a beautiful home with award-winning gardens. Now it could all be put at risk ...**

Since her husband's death, May's son Tim has helped maintain the gardens, spending every second weekend at her house. Now his weekends must be spent renovating their own apartment because his wife Amy is expecting their first child and they need to sell their apartment and move to a bigger place before the baby arrives. But there is another problem ...

When Tim and Amy applied for an extension of their mortgage to have the renovations done, the bank refused because their income will be reduced when Amy leaves work. “Seek a Guarantor” was their advice.

Tim said he would ask May, since he has done so much to help her keep her home.

When Tim raised this with May he was surprised by her response. May didn’t understand why her son and his wife could not move in with her, sell their place as is, and buy somewhere as soon as they could afford it.

### Questions May might ask:

**Q. Is there another way I can address this situation without going guarantor?**

**A.** Yes there is. If you don’t want to put your house at risk by going guarantor for Tim, there are two options that you could investigate:

- 1 You could contribute to the mortgage repayments, or

- 2 You could lend money to Tim via a loan agreement.

**Q. Which option would give me more protection?**

**A.** Option 1 would provide very little protection because it could be seen as a gift from you to your son.

Option 2 would tend to give you greater protection because a loan agreement securing the loan against the property is more clear-cut. You will be able to get your money back right after the bank does, should the couple ever default on their loan or if their relationship were to break down.

**Q. Is there anything else I should consider?**

**A.** Yes, another option for securing the loan would be for you to lodge a caveat on the title of Tim’s and Amy’s property. This would ensure that there were no additional dealings with the property without your knowledge and consent.

**Q. If I went guarantor, what steps could I take to protect myself?**

**A.** The first step you should take is to seek legal advice regarding the legal documents relating to going guarantor, as they can be complex and difficult to understand.

It is essential that you understand that the only reason the lenders want security (a guarantor) is because they’re not prepared to take the risk themselves.

### Get Independent Advice

It is important that you do not rely on the advice provided to you by Tim or the bank’s representative.

Before making any decision, seek independent legal advice on each of the options, so that you understand your position and the risks you are taking in any transaction.

### Personal Considerations

- How would each of these options affect May’s relationship with her son and her coming grandchild?