

Sample Family Agreement

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Notice and Disclaimer

This document is copyright.

It was drafted by Brian Herd of Carne Reidy Herd Lawyers to illustrate a loan arrangement suitable for the circumstances outlined in the case study in the **Family Agreements** section of this guide and therefore uses the names (Jean, Bev and Bob) used in that example.

The terms of this agreement will not suit all cases.

For use as a pro forma, legal practitioners have permission to adapt this document, substituting the names and circumstances of the parties to the agreement and changing the terms as appropriate.

This document should not be used or adapted without proper legal and financial advice.

THE [INSERT NAME] FAMILY AGREEMENT

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**DEED OF FAMILY AGREEMENT
FOR THE [INSERT NAME] FAMILY**

A DEED made at _____ on the _____ day of _____ 20____

BETWEEN _____ ('Jean')
of _____ Queensland.
AND _____ ('Bev and Bob')
of _____ Queensland.

BACKGROUND AND PURPOSE

- A. Jean is the mother of Bev who is married to Bob.
- B. Jean is a self-funded retiree aged 78 and currently owns a unit at [insert address] ('the Property') where she lives by herself.
- C. Jean enjoys her independence but is finding it difficult to cope with certain activities of daily living and is now in need of assistance in this regard.
- D. Bev is the eldest child of Jean and the other adult children are [insert names].
- E. Jean appreciates that she now needs some assistance but neither she, nor the family, want to resort to an assisted living facility to meet Jean's needs.
- F. The family have discussed the issues and addressed the options available to Jean in respect to her lifestyle and support needs.
- G. Bev lives at [insert address] with Bob and their [insert number] children aged [insert ages] and they own the property as Joint Tenants subject to the following encumbrances: [insert details].
- H. Bev, with the support of Bob, has proposed that Jean sell her unit and use part of the proceeds to lend to Bev and Bob to construct an addition to their home where Jean will live and be cared for as required by Bev and Bob.
- I. The parties now wish to record the terms upon which the arrangement will proceed and to set out the basis of their ongoing relationship and to clearly define their current and future rights and record their intentions as to the regulation of their affairs during their relationship and in the event that it should end.
- J. The parties also enter into this Deed in order to prevent confusion, to promote harmony between themselves and the family and to reduce the possibility of resorting to litigation at a later date.
- K. The other members of the family are aware of the provisions of this Deed and jointly and separately endorse it as evidenced by their signatures to the Deed.
- L. Bev and Bob have each been separately and independently advised prior to signing this Deed by their lawyers and, if they have thought it appropriate, their accountants and an actuary, as to the following matters:
 - a. The effect of this Deed on their rights;
 - b. Whether or not it is in their interests, financially or tax-wise, that each of them make this Deed;
 - c. Whether or not it is prudent for each of them to make this Deed; and
 - d. Whether or not, and in light of circumstances that are reasonably foreseeable, the provisions of this Deed are fair and equitable.

OPERATIVE PART

1. Agreement

- 1.1 The parties covenant and acknowledge that they intend this Deed to govern their rights and to be a guide to their relationship as well as to their separate and common property during their relationship and in the event that the arrangement should come to an end.
- 1.2 The parties also intend this Deed to create a legally enforceable agreement between them.

2. Legal Advice

- 2.1 **Bob** certifies that he has received independent legal advice from a Lawyer in relation to this Deed before signing this Deed.
- 2.2 Annexure A to this Deed is a Certificate of Legal Advice from [*insert name*] a Lawyer, stating that he or she has advised **Bob** in relation to this Deed.
- 2.3 **Bev** certifies that she has received independent legal advice from a Lawyer in relation to this Deed before signing this Deed.
- 2.4 Annexure B to this Deed is a Certificate of Legal Advice from [*insert name*], a Lawyer, stating that he or she has advised **Bev** in relation to this Deed.
- 2.5 **Jean** has received legal advice from the drafter of this Deed, [*insert name*], a Lawyer.

3. Dealing with the Property

- 3.1 **Jean** will take reasonable steps to sell the property for a price that is at least sufficient to leave her with enough money to make the loan required by this agreement.
- 3.2 The loan shall not be required to be made, however, until settlement of the sale of the property.

4. The Loan

- 4.1 **Jean** shall lend to **Bob** and **Bev** the sum of \$ [*insert amount*] on the settlement of the sale of the property.
- 4.2 Such loan shall be held in a joint bank account held by the parties and applied by **Bob** and **Bev** as required from time to time and with **Jean's** consent, to pay for the cost of construction of an independent and self-contained living unit at their property ('the Unit') where **Jean** may live, rent-free.
- 4.3 The loan shall be repayable on the terms set out in this agreement.
- 4.4 **Bev** and **Bob** shall account to **Jean** for the expenditure of the loan and, if the monies required to complete the construction of the Unit are:

- 4.4.1 Less than the amount the builder invoices, then the surplus shall be refunded to Jean;
or
- 4.4.2 More than the amount the builder invoices, then Bev and Bob shall pay the deficit.

5. The Unit

- 5.1 The Unit shall be constructed by a registered builder engaged by Bev and Bob and fitted out in accordance with the Council approved plans and specifications that the parties have agreed upon.
- 5.2 No material variations to the Unit shall be made without Jean's prior approval.
- 5.3 Jean shall provide the necessary furnishings for the Unit and shall be responsible for their upkeep and replacement as well as any special aids or other devices which may be necessary to assist Jean in her everyday living activities.
- 5.4 Bob and Bev shall be responsible for, and pay for, the structural maintenance and upkeep of the unit but Jean shall be responsible for and pay for any damage caused to the unit by her.
- 5.5 The unit shall be constructed and be fit for occupation by Jean within such period as may be agreed by the parties provided that, if no agreement is reached or the Unit is not fit for occupation within 6 months from the date of this agreement, then the agreement will terminate and the loan shall become immediately repayable to Jean.

6. Licence to Occupy

- 6.1 On practical completion of the unit, Bev and Bob grant to Jean a licence to occupy the Unit for life subject to the terms and conditions of this agreement.
- 6.2 The relationship between the parties shall not be of landlord and tenant nor shall anything constitute this agreement as a partnership in law.

7. Jean's Care

- 7.1 In consideration of the loan made by Jean and in acknowledgement of the increased capital value of their property, but also because of their desire to do so, Bob and Bev (together and individually) agree and declare that they will care for Jean and provide their personal services to her on an 'as needed' basis including but not limited to:
 - 7.1.1 Provision of meals, cleaning and personal laundry;
 - 7.1.2 Maintenance and repairs of the unit;
 - 7.1.3 Assistance with grooming, bathing, dressing and personal affairs;
 - 7.1.4 Purchasing with monies made available by Jean, or assisting her to purchase, food, clothing, toiletries and other personal items or necessities of life as needed and for the enjoyment of her life;
 - 7.1.5 Monitoring Jean's physical and mental condition and nutritional needs on a regular basis in cooperation with health care providers;
 - 7.1.6 Arranging to transport Jean to health care providers of Jean's choice and assisting her in carrying out their instructions and directions;

- 7.1.7 Arranging and facilitating social or community services for Jean;
- 7.1.8 Catering for activities such as outings and walks in keeping with Jean's lifestyle and health;
- 7.1.9 Respecting Jean's privacy where it is needed or required by her; and
- 7.1.10 Encouraging Jean's autonomy and independence and to stay active and involved in social and family interaction.

8. Consideration for Services

- 8.1 In acknowledgement of the services and assistance that Bob and Bev provide, which will be for an unspecified period of time, Jean agrees that the loan shall be reduced over the period of this agreement by the following calculation:

The agreed average number of hours of care each week is expected and determined to be (insert number) which shall be multiplied by one half of the relevant community care dollar rate per hour as determined by the rate charged by the organisation, Blue Care from time to time.

OR

Insert alternative calculation.

[Delete one]

- 8.2 The parties understand that, over the lifetime of the agreement, the hours spent in providing care will fluctuate according to Jean's needs but that, on average, Bev and Bob will expend approximately [insert number] hours per week.

9. Payment of Outgoings

- 9.1 In the event that utility services to the property and the Unit are not separately metered, the parties shall agree on their proportional share of the cost of electricity, gas and water as is appropriate. Failing agreement, the matter shall be referred to the dispute process set out below.
- 9.2 Bev and Bob shall ensure that they meet all outgoings and liabilities in relation to the property and the Unit, subject to Jean's contribution to the specific costs referred to above.
- 9.3 Bev and Bob will pay for, and maintain at all times, appropriate Household Insurance (including Public Liability) to cover the usual risks in respect to their property and the Unit and indemnify Jean in respect to any liability she may suffer arising out of any claim against her in respect to her occupation of the property or unit.

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10. Holidays, Absences and Respite

- 10.1 The parties acknowledge that it is important for the continuing happiness of their relationship that they are able to take breaks away from each other.
- 10.2 **Bev** and **Bob** may take at least 4 weeks holidays per year away from the property and shorter periods, from time to time, for respite. **Jean** may wish to do similarly.
- 10.3 During the times of **Bev** and **Bob**'s or **Jean**'s absence (incl hospitalisation), the amortisation of the loan referred to above (if applicable) shall be suspended.
- 10.4 In the event of **Bev** and **Bob**'s absence, however, they shall make such arrangements as are necessary to ensure that **Jean** receives all necessary care from alternative services. **Jean** shall be liable for the cost of all such services.

11. Security of Jean's Interests

- 11.1 The parties acknowledge that the loan made by **Jean** is unsecured.
- 11.2 To better secure the repayment of the loan, however, **Bev** and **Bob** agree that they will, if required by **Jean**, sign a mortgage over the property in usual terms to secure the repayment of the monies owing to **Jean**.
- 11.3 **Bev** and **Bob** agree also that **Jean** may, at anytime, lodge a caveat over the property as a beneficiary of a constructive trust constituted by this agreement to further secure her interests under this agreement.
- 11.4 **Bev** and **Bob** shall sign all such documents as may be required by this clause when required and, if they do not, they appoint **Jean** to be their Attorney to do so.

12. Voluntary Ending of the Agreement

- 12.1 The parties acknowledge that, at some time during the agreement, circumstances may arise which bring this agreement to an end, for example:
- **Jean** may be hospitalised for a lengthy period;
 - **Jean** may be assessed as being unable to care for herself without full time assistance;
 - **Bev** and **Bob**'s circumstances may change such that they are unable to continue to provide the care required by this agreement;
 - The parties' relationship may deteriorate to the extent that they do not wish to continue the arrangement.

In any of these events, any party can bring this agreement to an end and **Bev** and **Bob** shall do all such things as are reasonably necessary to identify and obtain alternative accommodation for **Jean** which is suitable for her and within her financial capacity. **Jean** shall not be required to vacate the unit however, until alternative suitable accommodation has been found.

- 12.2 In any of the events mentioned above, the loan outstanding to **Jean** shall become immediately due and payable on **Jean** vacating the Unit and will accrue interest from that date at the then prevailing variable home loan rate as charged by the Commonwealth Bank of Australia.

13. Involuntary Ending of the Agreement

- 13.1 Circumstances may also arise during the Agreement when one party wishes to end the Agreement and the other does not. Such circumstances may include:

- **Bev** and **Bob** wish to, or have to sell the property;
- **Bev** and **Bob** suffer matrimonial discord resulting in the property having to be sold;
- **Bev** or **Bob** have a sequestration order made against their estate;
- Any party dies; or
- Any party defaults in its obligations under this agreement.

In such event, this agreement shall come to an end and the provisions of the previous clause shall apply as if the agreement came to an end voluntarily.

14. Disputes

- 14.1 Any disagreement or dispute shall be addressed in a 2-step process:
- The parties agree that [*insert name*] is appointed as a monitor of this agreement. This means that he may, at the request of any party and from time to time, review and make recommendations on how the arrangement is working and how it may work better;
 - If the monitoring above is not resolving any issues promptly, then any party may refer the matter to a Mediator appointed by the **Queensland Dispute Resolution Centre** and each party shall do all such things as are necessary to resolve the matter through mediation.
- 14.2 No party is entitled to resort to litigation until the mediation process above has been completed and been unsuccessful.

15. Indemnity and Insurance

- 15.1 **Bob** and **Bev** indemnify **Jean** against any loss or damage she may suffer because of the actions or inactions of **Bob** and **Bev**.
- 15.2 **Bob** and **Bev** shall maintain at all times during **Jean's** residence, all such insurance policies as may be necessary and reasonable to support the indemnity above including but not limited to Public Liability, Professional Indemnity, Building and Contents.

16. Incapacity

- 16.1 All parties agree that they will each complete, and keep in force, a valid Enduring Power of Attorney in which they appoint a person(s) chosen by them to make decisions, both financial and personal, in the event that any of them should lose the capacity to do so.

17. Status of this Agreement

- 17.1 The parties acknowledge and accept that this agreement does not create a relationship of employment or partnership but that **Bob** and **Bev** contract as independent contractors to **Jean**.
- 17.2 Each party shall ensure that they comply at all times with their tax obligations that may arise under this agreement and each of them indemnifies the other in this respect.

18. Binding of Estates

- 18.1 This agreement binds each party's estate.

19. Interest

- 19.1 Any monies due and owing to **Jean** under this agreement which are not paid to her on time shall accrue interest at the rate specified by the Commonwealth Bank for overdraft accounts over \$100,000.00.

20. Costs

20.1 Each party shall pay their own legal costs in relation to this agreement but **Bev** and **Bob** shall pay any stamp duty assessed.

SIGNED AS A DEED

SIGNED SEALED AND DELIVERED by)
JEAN)
Before me:)

Witness

SIGNED SEALED AND DELIVERED by)
BEV)
Before me:)

Witness

SIGNED SEALED AND DELIVERED by)
BOB)
Before me:)

Witness

FAMILY ENDORSEMENT

The endorsement of this agreement by other members of the family is attached.