

FAMILY MATTERS

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Potential Perils of Lending Money to— or Acting as Guarantor for— Younger Family Members: Lending Money in Good Faith

Mrs. A, a widow in her 70s, has lived in the same house in Vancouver for 50 years. That house is now worth a considerable sum of money. Mrs. A has little income but she has no intention of “downsizing.” Always careful with money, Mrs. A has put away savings of approximately \$50,000 for a “rainy day.”

Mrs. A has two adult children—daughter Jane, divorced with three children, and son Steve, unmarried with no children. Jane and her three children have been staying with Mrs. A since Jane’s recent divorce. Space is tight but Mrs. A is anxious to help her daughter and grandchildren any way she can. Jane would like to buy a place of her own but can’t afford the downpayment. Jane asks Mrs. A to lend her the money “until she gets back on her feet.”

Mrs. A wants to help and agrees to lend Jane all of her savings: \$50,000. Three years later, Jane has made no repayments. The situation is a source of great anxiety for Mrs. A, who is afraid that bringing up the matter with Jane will cause problems in their relationship and perhaps in Mrs. A’s relationship with her grandchildren.

Mrs. A can simply not afford to treat the money as a gift or as an “advance” on inheritance. She had been planning to put at least some of the money toward necessary repairs and renovations to her

home. She would also like to assist her son Steve. Mrs. A. does not think it would be fair for Jane simply to keep the entire sum. Anxious to preserve goodwill within the family and worried about taking care of herself in her home, Mrs. A does not know what to do next.

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Helping out younger family members is a priority for many older adults. Sometimes, however, that help can result in unintended and untenable financial hardship for older adults and can strain family relationships to the breaking point—even where all parties have the best of intentions. There is no exploitation or financial abuse in the case of Mrs. A, for example, but the misunderstandings arising from conflicting, unstated assumptions have resulted in distress to Mrs. A and the possible loss of her life savings.

Mrs. A assumed Jane would begin making payments within the year, but Jane assumed there was no hurry for repayment; Mrs. A owned her own home

and seemed to have few expenses. The \$50,000 was (Jane assumed) “extra” money and if Jane did not get around to paying it back during the lifetime of Mrs. A, the amount could simply be “taken off” Jane’s inheritance. Perhaps Jane understood the loan as really more of a gift; because Steve had no children, there was no reason (in Jane’s opinion) for Mrs. A to be concerned about fairness.

Guarantor Beware

Guarantees may also be a source of loss and stress for older adults who agree to act as guarantors for a loan made to a younger family member. Imagine that Mrs. A’s son Steve is applying for a bank loan to finance the expansion of his business. Steve explains that the bank requires a guarantee as a “formality” and that there will be little risk to Mrs. A. Mrs. A. agrees to help.

At the bank, the manager explains that the guarantee means that if Steve does not make the repayments on the loan, Mrs. A will be responsible. Mrs. A does not want to give the impression that she lacks confidence in Steve’s promise to make the repayments and agrees to act as guarantor.

Steve’s business does not, in fact, thrive as he expected and Mrs. A learns she will be responsible for repaying the loan. Her house is her only significant asset. Mrs. A is devastated; she is angry with Steve for putting her in this position and ashamed of herself for being there.

Intra-family loans and guarantees are “legal issues affecting seniors” because older adults are especially likely to become involved in arrangements of this kind. Older adults are, of course, not the only people who make loans to family members or agree to act as their guarantors.

Older family members are especially likely to be asked to help out in this way, for several reasons: the greater resources, fewer living expenses, and shorter life expectancy of the older adult and the financial needs of younger family members who may be raising their own children, starting a business, or entering an expensive housing market. Older family members may be motivated by a real desire to help or they may want to demonstrate their confidence in the younger person’s plans and abilities.

The Canadian Centre for Elder Law Studies is currently looking at ways to reduce the problems associated with loans and guarantees. Raising awareness about those problems is an important step in this direction. Seniors, especially, must realize that things can go wrong even where nobody intends them to—even where everyone is a nice person and nobody means to take advantage.

We are currently asking the public to tell us what they think about our other suggestions for dealing with problems associated with loans and guarantees. Those suggestions are contained in the “Consultation Paper on Financial Arrangements Between Older Adults and Family Members: Loans and Guarantees.” The Consultation Paper and a Background Paper on the loans and guarantees are available on the Canadian Centre for Elder Law Studies. Website: <http://www.ccels.ca>.

If you prefer, copies can be mailed to your address free of charge. ▲

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