

My Home, My Choice*

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For many individuals with disabilities and their families, establishing an affordable and sustainable plan for a future home that reflects personal choice and respects self-determination is often an overwhelming process. Despite this, some good examples exist in Ontario where individuals, along with their families, support networks and sometimes an independent facilitator, have developed a personalized, innovative home option.

With limited government funding available for home/residential supports and services, individuals and their families must think of creative approaches when planning for a person's future home. Moreover, there are thousands of individuals on waiting lists for support, many of whom will wait for years before something becomes available.

This article provides you with information about the legal options associated with creating a home that respects individual choice and social inclusion. While one must also consider the types of financial and personal supports required, the legal framework used to structure the living arrangement will serve as the blueprint for the overall residential plan.

The chart below identifies 6 different ownership/rental options, all of which provide for more flexible and progressive living choices for individuals with the disabilities. Each option is discussed within the context of 5 evaluation criteria that should be considered when creating your plan.

The criteria are as follows:

1. Personal Supports

Depending on their disability, individuals may require various kinds of support to carry-out their activities of daily living. Examples could include but are not limited to assistance with mobility, cooking, cleaning and dressing. Supports may be provided by a support worker, personal assistant, attendant care, and/or through the Community Care Access Centre (CCAC) health supports.

2. Housing Supports

There are many responsibilities associated with owning and managing a home on a day-to-day basis. These may include obtaining financing, paying bills and general maintenance and upkeep.

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3. Impact on the Ontario Disability Support Program (ODSP)

Individuals that rely on support from ODSP must adhere to financial eligibility requirements. Sources of income, income amounts and asset limits must all be considered.

4. Legal Decision-Making

Individuals require varying degrees of support when it comes to managing property and entering into contracts (i.e. the Agreement of Purchase and Sale for a home or rental agreement). Unfortunately our laws in Ontario do not recognize supported-decision making arrangements and therefore an individual must meet the legal test of being “capable” to manage their own property or “contractually capable” of entering into a contract.

5. Sustainability & Taxation

Consideration should be given to whether the individual requires support in managing the home and if so whether the framework for such support is sustainable (i.e. what if a parent passes away). In addition, it is important to think about the disposition of the property upon the individual’s passing away.

Option	Personal Supports	Housing Supports	Impact on ODSP	Legal Decision-Making	Sustainability & Taxation
Sole owner <ul style="list-style-type: none"> Home owned by individual. 	<ul style="list-style-type: none"> Funding for supports would come from other sources. Part of the home could be rented to generate additional income. A student or other housemate could provide support to the individual in exchange for rent or reduced rent (One example: overnight support). 	<ul style="list-style-type: none"> Individual responsible for managing the property. If funds are available, property management services could be purchased. Individual could appoint a legal representative under a Continuing Power of Attorney for Property to assist with administration of the home.¹ 	<ul style="list-style-type: none"> Ownership of the home does not affect ODSP. Rental income will likely be deducted off of the individual's monthly ODSP income. Sale of home could affect ODSP benefits. 	<ul style="list-style-type: none"> There may be requirements with respect to the owner of the home being legally capable of managing property and/or entering into a contract. 	<ul style="list-style-type: none"> Home falls into the individual's estate upon his/her passing away. If there is no Will in place, then the proceeds of the home will transfer to family members in a specified order. Principal residence exemption on capital gains would apply.
Joint owners <ul style="list-style-type: none"> Home owned by more than one person, one of which is the individual. 	<ul style="list-style-type: none"> May be provided by joint owner. Part of home could be rented to generate additional income. A student or other housemate could provide support to the individual in exchange for rent or reduced rent. 	<ul style="list-style-type: none"> Joint owner could assist with managing the property. If funds are available, property management services could be purchased. 	<ul style="list-style-type: none"> Ownership of the home does not affect ODSP. Rental income will likely be deducted off the individual's monthly ODSP income. Sale of home could affect ODSP benefits. 	<ul style="list-style-type: none"> There may be requirements with respect to the owner of the home being legally capable of managing property and/or entering into a contract. 	<ul style="list-style-type: none"> If joint owner passes away, there may not be someone in place to support the individual with the management of the property. Legal considerations should be given to establishing a "joint tenancy" or a "tenancy-in-common". Principal residence exemption on capital gains would likely only apply to individual's ownership stake in the home.
Held in Trust <ul style="list-style-type: none"> Home is held in testamentary or inter-vivos (living) trust. Individual is the beneficiary of the trust. 	<ul style="list-style-type: none"> Supports could be funded by trust. Part of the home could be rented to generate additional income. A student or other housemate could provide support to the individual in exchange for rent or reduced rent (for example, overnight support). 	<ul style="list-style-type: none"> Trustees are in place to manage the home. If funds are available, property management services could be purchased. 	<ul style="list-style-type: none"> Ownership of home by trust would not affect the individual's ODSP. Rental income would be considered income of the trust and therefore would not affect ODSP. 	<ul style="list-style-type: none"> The legal capacity requirements apply to the trustees only. 	<ul style="list-style-type: none"> The trust document should account for multiple/alternate trustees to ensure that there is at least one in place for the duration of the beneficiary's life. The trust document determines who inherits the proceeds of the home upon the passing of the beneficiary. If structured properly, the principal residence exemption on capital gains may apply.

¹ See section 8 of the *Substitute Decisions Act* to determine whether the individual is able to grant a Continuing POA for Property.

Options	Personal Supports	Housing Supports	Impact on ODSP	Legal Decision-Making	Sustainability & Taxation
Self-directed Support Organization <i>(Often referred to as a 'Microboard' in British Columbia and an 'Aroha' in Guelph, Ontario)</i> <ul style="list-style-type: none"> Home is owned by small non-profit corporation. 	<ul style="list-style-type: none"> Supports could be paid for with funds managed by the corporation. Examples of funding sources: individualized funding, RDSP, funds left in trust. Supports may be shared by more than one person/family. (One example: Roommates sharing a live-in caregiver or overnight support worker.) 	<ul style="list-style-type: none"> Directors and/or employees are in place to manage the home. 	<ul style="list-style-type: none"> Ownership of home by corporation would not affect the individual's ODSP. Rental income would be considered income of the corporation and therefore would not affect ODSP. 	<ul style="list-style-type: none"> The legal capacity requirements apply to the directors of the corporation only. 	<ul style="list-style-type: none"> The legal structure of the corporation requires a minimum number of directors always be in place. Directors can easily be added/changed. Upon the beneficiaries' passing, the property would be the responsibility of the corporation. Principal residence exemption on capital gains may not apply.
Partnership <ul style="list-style-type: none"> Home is owned by legal partnership (of which the individual is not a partner). Two families may purchase a home together for their son or daughter/sister or brothers. 	<ul style="list-style-type: none"> Supports can be funded by the legal partnership. Supports may be shared by more than one family. 	<ul style="list-style-type: none"> Partners and/or employees of the partnership are in place to manage the property. 	<ul style="list-style-type: none"> Ownership of home by partnership would not affect the individual's ODSP. Rental income would be considered income of the partnership and could affect ODSP. 	<ul style="list-style-type: none"> The legal capacity requirements apply to the partners of the partnership only. 	<ul style="list-style-type: none"> Partnership agreement would include provisions related to sustainability and succession planning.
Rental <ul style="list-style-type: none"> Individual rents home. Other family members may own the home. 	<ul style="list-style-type: none"> Funding for supports would come from other sources. 	<ul style="list-style-type: none"> Landlord is responsible for managing the property. 	<ul style="list-style-type: none"> Renting a home would not affect ODSP supports. 	<ul style="list-style-type: none"> There may be requirements with respect to the tenant being legally capable of signing a lease. 	