

# Parent Loans and Family Law

## Why Informal Arrangements Can Create Major Risk

With rising property prices, it is increasingly common for parents to assist their adult children financially, often to help them enter the housing market.

However, when relationships break down, these arrangements can become legally complex. A recent appeal in the Federal Circuit and Family Court of Australia in *Han & Han [2026]* highlight the significant risks associated with parental loans, particularly where they are informal or not consistently enforced.

### What Happens to Money Advanced by Parents?

A key question in family law matters is whether the funds will be treated as:

- A loan (a liability to be repaid); or
- A gift (no repayment required).

The importance of this is whether the liability will be included in the asset pool available for division.

### What the Han Case Confirmed (including on Appeal)

In *Han & Han*, the husband claimed he owed his parents (and their entities) approximately **\$4.66 million**. This consisted of principal of \$1.8 million and accrued interest of \$2.8 million.

Despite:

- Written loan documentation; and
- A Caveat registered on the property,

the Court:

- Found the debt was not properly proven; and
- Considered it unlikely to be enforced in practice.

The result was significant, as the Court excluded the loan entirely in assessing the property pool. This outcome was upheld on appeal.

## Key Lessons from Han

### 1. A Loan on Paper is Not Enough

The Court requires clear evidence of:

- how much was advanced;
- repayment terms;
- interest calculations; and
- current balance.

If the amount is unclear or unsupported, the Court may disregard it.

### 2. Behaviour Matters more than Documentation

The Court focused heavily on how the parties actually behaved, including:

- long periods without repayment;
- delayed or selective enforcement,
- action only being taken after separation.

### 3. The Critical Question: Will it be Enforced?

In *Han*, although the creditors sent a letter of demand (after separation), the creditors did not issue proceedings against the husband to enforce the loan repayment, nor did they seek to intervene in the family law proceedings. Also, the husband did not call the creditors to give evidence in the family law proceedings.

### 4. Even Secured Loans Can be Ignored

In *Han*, the husband relied on a caveat in support of the parental loan, however this was insufficient to establish a genuinely enforceable secured arrangement — underscoring that, where a loan is intended, it should be supported by stronger security (such as a registered mortgage) and treated consistently as a commercial obligation.

### 5. The Court has Broad Discretion

Ultimately, liabilities that are vague, uncertain, or unlikely to be enforced may not be included if it would be unjust or inequitable to include them.

If a loan from a parent is excluded from the asset pool, this does not necessarily mean a parent cannot recover payment from their child alone.

In *Han*, the Court accepted there was an underlying liability owed by the husband (albeit not necessarily the amount claimed) to his parents, but found it should not be attributed to the wife or included in the asset pool as a liability of the parties in calculating the division.

## If the Funds are a Gift Instead of a Loan

If the Court finds the funds were a gift:

- The money is not repayable (at least not by the other party);
- The receiving party may receive credit as a financial contribution.

However:

- This is not always dollar-for-dollar; and
- The weight of the contribution depends on factors such as how long ago it was received, its use, and its proportion relative to the total asset pool.

Importantly, even if funds are characterised as a gift, the Court will focus on the actual financial contribution made, rather than any inflated figure attributed to it.

For example, in *Han*, the majority of the claimed \$4.66 million related to accrued interest rather than the original funds advanced. The husband's contributions were only assessed on the property he had purchased using the funds advanced, rather than on an inflated amount that included interest.

## How to Better Protect Parental Funds

If parents intend funds to be repaid:

### 1. Properly Document & Secure the Loan

- Written loan agreement;
- If entered into during the relationship, ensure both spouses are parties to, and sign, the Loan Agreement;
- Clear repayment terms;
- Interest provisions;
- Repayment schedule;
- Register a Mortgage.

### 2. Act Consistently with a Commercial Loan

- Make and record repayments;
- Enforce defaults in a timely manner.

### 3. Consider a Financial Agreement

A Financial Agreement can

- Confirm whether funds are a loan or gift; and
- Determine how they are treated if the parties separate.

Each party must obtain independent legal advice prior to signing the Financial Agreement.

### 4. Consider Other Structural Options

If the funds are loaned by the parents to purchase a real property, consider registering the parents on Title.

However, there are the following considerations:

- This can create unintended taxation issues including state taxes such as Land Tax;
- Stamp duty consequences in the future if the property is to be transferred to the child;
- If the property is sold in the future, the parents may legally be entitled to a share of the sales proceeds in line with their percentage share on title – not just the amount they advanced towards the initial purchase.

## Need Advice?

This is a complex and high-risk area of law. Early advice can prevent costly disputes and uncertainty later.

At McKean Park Lawyers we have experienced lawyers in this area of law that can provide you with professional and expert advice.

**Melissa Muir**

Special Counsel

**Expert advice. Practical solutions. Personal service.**

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