

Parent Loans and Family Law

In recent years and particularly given the current boom in house prices, it is not unusual to see parents advancing funds to their children to assist them into the housing market. The question then is what happens to these funds if the parties separate.

■ Will the Funds be Repaid to the Parents?

The short answer is, unless there was a legally binding loan agreement between the parents and child at the time the funds were advanced, or evidence of repayments throughout the relationship, it is unlikely the parents will be reimbursed any money. The funds will be treated as a “gift”.

■ Does the Spouse Receive Recognition for the Gift from the Parents?

If the funds are treated as a gift and not a loan, that spouse may receive credit for the funds gifted by their parents. The gift may be seen as a “contribution” on behalf of that spouse, when assessing how the asset pool is to be divided.

However, it is not necessarily dollar-for-dollar. It will largely depend on how long ago the funds were received during the relationship, what the parties did with the funds and what percentage of the current asset pool does the gift relate.

For example, a gift of \$300,000 received one year ago when the current asset pool is \$500,000 will likely be viewed as a greater contribution than a \$300,000 gift received 20 years ago when the current asset pool is \$3 million.

■ How to Protect Funds Advanced from Parents from a Family Law Claim

Not surprisingly, when assisting children to purchase a property, parents may be concerned about protecting the funds from any potential family law claim. There are a number of ways to help protect the funds:

- Entering into a formal Loan Agreement at the time the funds are provided. However, there can be consequences of this, such as:
 - Taxation implications for the parents;

- If the funds are treated as a loan rather than a gift, it may be difficult for the parties to obtain finance for the balance of any funds required for the purchase or impact any future refinance;
- Implications for estate planning – if the child owes money to the parents, that loan can be payable to the parent’s estate upon the parent’s death.
- Entering into a Financial Agreement – to confirm the funds are a loan and to be repaid if the parties separate and/or are to be quarantined from the asset pool if the parties separate. Both spouses need to agree to this and each need to receive independent legal advice.
- Adding the parent’s names to the title, however there are the following considerations:
 - The property may be considered an investment and therefore subject to tax obligations.
 - If the property is sold in the future, the parents would 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.

This is a complex area of law and it is recommended that you obtain financial and legal advice prior to assisting children to purchase a property or advancing any funds. At McKean Park Lawyers we have experienced lawyers in this area of law that can provide you with professional and expert advice.

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