Borrowing from the Bank of Mum & Dad; what happens if we separate?

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The Australian Financial Review, in its article "Bank of Mum and Dad becomes top 10 mortgage lender" (published 19 March 2021), confirmed the Bank of Mum and Dad was the 9th largest lender (in terms of the value of loans) in Australia. The "Bank of Mum & Dad" is the colloquial term used to refer to parents financially helping out their children.

This Bank of Mum and Dad is larger than some of the most established and well-known banks, including AMP and HSBC.

The rise in the popularity of the Bank of Mum & Dad is a result of a number of factors, including:

- Wealth accumulated by Mum and Dad;
- The largest rise in residential property prices across Australia in more than 15 years;
- A shortage of available properties for prospective purchasers;
- Fear of missing out for millennials (the age group between 25 years of age and 40 years of age) attempting to break into the property market; and
- The desire of parents to assist their children to get into the property market.

The combined effect of the above has resulted in many millennials turning to their parents, the Bank of Mum & Dad, for financial assistance to purchase property.

Protecting investment by the Bank of Mum & Dad

The Family Court has extensive and wide-ranging powers when determining financial matters between married spouses and de facto partners.

In our blog, “Is it a gift or a loan”, the crucial distinction between monies loaned or monies gifted was explored. The answer to this question may have far-ranging impacts and consequences as to how such monies will be treated in a financial settlement between separated parties.

Due to the rise in demand of the Bank of Mum & Dad, there has also been an increase in demand from parents wanting to safeguard and protect monies provided to children in the event of a relationship breakdown.

One of the safest ways to protect monies provided between family members is via a written agreement.

Options for Written Agreements

There are two primary options for parents to provide some protection in relation to the financial assistance they provide to their children.

1. Loan Agreement

One option is to document the provision of monies from parents to children in a written loan agreement, preferably drafted by a solicitor.

The loan agreement should, amongst other terms, contain the following terms and conditions:

The amount of money loaned;

The purpose or intention of how the loaned monies will be used;

Interest rate;

Term of the loan (the duration);

- Repayment schedule; and
- Security for the loan.

The loan agreement should be complied with in ways any other commercial agreement would be. This includes compliance with all key terms and conditions of the loan.

2. Financial Agreement

Another method, often used in conjunction with a loan agreement, is a financial agreement between married or de facto spouses.

In our blog, “What is a family law financial agreement?”, we explored financial agreements.

Financial agreements enable parties to regulate their financial relationship in the event of separation, giving them more control over financial decisions. Financial agreements can be made before a relationship commences, during the relationship or at the end of a relationship.

Parents often require their children to enter into a financial agreement with their spouse as a condition, prior to the provision (whether as a loan or gifted) of monies for a property purchase.

Get help from a family lawyer

If you are considering providing financial support to your children to assist with a property purchase, or for any reason, you should seek legal advice as early as possible.

Meillon & Bright’s team of experienced family lawyers are specialists in property settlements, including working with families on a range of financial arrangements and preparing financial agreements and loan agreements for monies provided by family members.

We have close working relationships with a number of experienced professionals, including commercial lawyers, accountants and financial advisors, to consider all aspects of financial arrangements.
