The Bank of Mum and Dad – Gifts from your Parents and Property Settlement Agreements

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The Australian housing market is difficult to break into for most first home buyers and many couples have looked to their parents for some assistance to get their foot in the door. For many, parents may provide assistance to their children by allowing them to live at home rent-free or contributing to their deposit in the form of a gift or loan. In many cases, “the bank of mum and dad” is crucial to helping relatives to be able to buy their own home.

As it becomes more common for parents to provide financial support to the parties during a de-facto relationship or marriage, there is an increasing likelihood that these “third parties” may become involved in a dispute concerning a property settlement agreement between the parties if the relationship was to break down. For example, where there is an argument as to whether money received by the parties (or either of them) was a gift or a loan to be repaid.

In family law matters regarding a property settlement agreement, gifts and loans are treated differently, and the outcome can change the size of the asset pool and the amount a party may receive.

The Court may consider a number of factors to determine if there is a repayable loan, including whether there is a written loan agreement, the terms of any agreement (and evidence of discussions relating to the terms), whether repayments have been made, whether the loan is required to be repaid (or if it is statute barred), whether there is any expectation of repayment, and whether security was provided. If the Court finds that money was a gift, it is usually treated as a contribution to the assets of the parties by the person whose family gave them the money.

Recent Case: *Mabb & Mabb and Anor* [2020] FamCAFC 18

In the recent case of *Mabb & Mabb and Anor* [2020] FamCAFC 18, the Full Court considered whether a transfer of land from the husband’s parents to the couple jointly was a gift to them. The husband’s parents subdivided a block of land and in 2001 transferred 60 acres to the husband and wife in their joint names. The couple then established a cropping and retail business on the property.

The Court confirmed that while it is reasonable to assume that the presumed intention of a parent is to advance to their “child” in the marriage, it is no more than an evidentiary device. In this case, the transfer of the land to the parties jointly was a ‘strong indicator’ that the actual intention was to give the land to both parties and not just the child. The result was that although the gift came from the husband’s parents, the husband did not get any extra recognition for the property being brought into the relationship, as it was considered a contribution made by both the husband and wife.

If you:

1. have benefited from, or expect to obtain a benefit from, the “bank of mum and dad”, or
2. if you are the “bank of mum and dad”,

then we recommend contacting our office to discuss how these principles may apply to your property settlement agreement, and what steps may be taken to protect your interests.

For advice about your property settlement agreement contact us on 1800 300 170 or email us at famlaw@matthewsfolbigg.com.au

Disclaimer

Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the uniqueness of your individual situation, professional advice should be sought. For advice, please contact one of our Family Lawyers.