

Family Law Fact Sheet

My adult child is getting divorced – what about all that money we gave/loaned them?

Parents providing money to their adult children to enable them to get a start in life is a normal experience in our society.

Parents often make gifts of capital to their adult children when an inheritance flows to the family, to celebrate the birth of grandchildren, or to assist with the purchase of property.

In the event those adult children then separate, their parents are often left wondering whether the money they gifted/loaned to the couple can now be repaid or how that money will be treated in the division of assets between their adult child and daughter/son-in-law.

Much can be done at the time the money is to be provided to adult children to ensure a favourable treatment of this money in the event of a separation. The intention of the donor (the person providing the money) at the time of the transaction is key and it is crucial that there is documentary evidence setting out the intentions of the parents at that time.

The treatment of such money varies, depending on a number of factors and can be recovered in some instances.

Loans

Where it is either agreed or a Court is satisfied that the money is a loan, usually the loan is taken into account in calculating the net assets available for distribution between the separating spouses.

In that instance it is also usual that an order will be made which deems the adult child liable to repay the money to his or her own parents rather than the former son or daughter-in-law. Where the money is treated as a loan, other assets are also usually received to compensate for the fact that they are accepting sole responsibility for repaying the loan.

Gifts

Where the parties agree or a Court makes a finding that the money is a gift, the Court will consider the significance of that gift in making a finding as to the contributions that each of the

separating spouses has made to the acquisition, conservation and maintenance of property as part of the process of coming to a just and equitable resolution of property settlement matters. The aim of a property settlement is to end the financial relationship between separating spouses and therefore it is rare that responsibility for debts will be shared following settlement.

In the event your adult child is going through a separation, we recommend obtaining legal advice in relation to money provided as soon as possible.

It is also important that legal advice is sought prior to gifting or loaning money to adult children after they have separated, but before their property settlement is finalised. This is because whether that money is treated as a loan or a gift can also have an effect on property settlement matters between the separating spouses.

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