

# Pitfalls of Lending to Family

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Recently, our firm has seen quite a few cases in which family members have advanced monies to another in a marriage or de facto relationship.

In the case of *Liakos & Zervos & Anor* [2011] FamCA 547, money was advanced to a husband by his father. There were questions surrounding the repayment of the loans, which ended up in the Family Court for determination.

When the husband and wife separated, the husband's father called upon the parties to repay the loans with compound interest. The total debt far exceeded the net assets of the matrimonial pool of assets.

Rather than characterising these advances as "loans", the Court treated them as monetary gifts. This meant that the gifts were held to be financial contributions made by the husband (to the marriage) and consequently the husband had made greater financial contributions than the wife.

If the Court had characterised the advances as loans, then those loans would have been required to be paid before the division of the matrimonial pool could be finalised between the husband and wife.

If you are considering lending money to a family member, and indeed wish for it to be treated as a loan rather than a monetary gift there are a few things that should be done:

- Make sure that the loan agreement is properly documented as a formal agreement;
- Ensure that all parties to the loan are named in the loan agreement;
- Ensure that the loan agreement is correctly signed and is dated by all of the parties;
- Be Specific! Include the amount of the loan, whether interest is payable and the dates for repayment;
- Consider registering a mortgage or a caveat to secure the loan;



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With you.



- Ensure that each party to the loan agreement keeps a copy of the loan agreement in a safe and easily accessible place; and
- Seek legal advice to ensure that your agreement is properly prepared and correctly reflects the intentions of the parties.

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Elspeth's articles can be accessed on the Daily Mercury website at <http://www.dailymercury.com.au/topic/elspeth-ledwy/> or you can find Elspeth's column "Mind Your Own Business" in the Daily Mercury newspaper each Wednesday.



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