

LOANS WITHIN FAMILIES AND FRIENDS

Financial transactions within families are potential sources of misunderstandings which can eventuate into a conflict which can be difficult to resolve. It is therefore essential that all parties are aware of the expectations of the other and it is always best if the terms of the loan are put in writing.

While many people would feel uncomfortable requiring a close friend or relative to sign a loan agreement it can prevent problems arising at a later date. Even if the paper is only receipt for the money with the date the lender expects to be repaid included, that provides evidence of the parties' intentions. It is not necessary to involve a lawyer to prepare the loan document but if there are terms which need to be spelt out correctly it may be wise to consult a lawyer.

It is a good idea to have some knowledge about the intended use of the loan money. If it is because someone is short of money a lender may be able to provide some budgeting assistance. On the other hand if the loan is required for a business enterprise it may be a gamble whether the lender will get the loan repaid. Many small businesses simply do not survive.

Most parents want to help their children as much as they are able to. Most banks would require a guarantee which often means mortgaging their own home to provide security for a loan to family. It is not a good idea to give a mortgage on a home for the benefit of family as the Bank can and will sell the home to recoup the loan if the family members do not comply with the terms of their mortgage.

Similarly no-one should over guarantee a loan for anyone else if the borrower does not pay the lender the installments under a loan, the borrower will become liable for all moneys owing to the lender.

It is essential for anybody guaranteeing or providing security for a loan to get advice which is independent of the Borrower. A lawyer will charge for independent advice, which is usually paid by the Borrower, but it can be money well spent.

So with all loans it is essential to have a clear understanding of the nature and terms of the loan which is best put in writing and signed by both borrower and lender to avoid awkward future misunderstandings.

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