

Inter-generational loans for first home buyers

With New Zealand's over-heated property market, which is seeing \$1m+ average house prices in Auckland, it's harder than ever for new generations to get onto the property ladder. A lot of families are having to be creative, which is seeing more and more children turning to their parents for help.

Meet Art and Matilda, a young couple who are keen to buy their first home together. They have cut back on extravagances and have been saving hard, but don't quite have enough for the 20% loan-to-value bank requirement (LVR).

Art's parents have generously offered to help them to make up the difference. But they are concerned about Art and Matilda's relationship long term, and want to protect their contribution whilst satisfying the bank's requirements.

There are three common ways to structure the arrangements between parents, children and their partners:

1. Art's parents' loan is recorded in a loan agreement and secured by second mortgage over the property (but the bank will need to consent to the second mortgage);
2. Art's parents take an interest in the property equal to the share of their contribution. So if they contribute \$120K for a \$600K property purchase, they are recorded on the title as registered proprietors with a 20% share. Art's parents can share in any potential increases or decreases in capital value. However other than reducing the LVR for their 20% contribution this approach won't help Art and Matilda with their overall LVR issue (so would need an additional step, below); or
3. Art's parents gift the funds to Art. In order to satisfy LVR restrictions set by the Reserve Bank, banks are now requiring parents to provide evidence that their contribution is a gift that does not require repayment.

The next issue is how best to treat the arrangement between the young couple and Art's parents.

Given Art's parents' concerns, they may choose to make their contribution as a gift to Art only, and have the gift recorded in a Deed of Gift.

If Art applies the gift to the acquisition of a family home for him and Matilda it is going to be captured by section 8 of the Property (Relationships) Act (the **PRA**). In order for the gift to retain its separate property status, Art and Matilda would need to enter into a

section 21 agreement contracting out of the equal sharing provisions of the PRA, ring fencing the gift as separate property.

This next part is equally important. As it's unlikely that Art and Matilda have the financial resources to pay for independent legal advice, Art's parents may have to financially assist both Art and Matilda to meet their respective legal fees.

Ensuring that both parties receive competent, independent legal advice is essential in order to ensure that the section 21 agreement is not challenged at a later date for lack of independence, inadequate advice and/or because it was so restrictive it had become seriously unjust.*

It is important to consider not just the bank's requirements, but also how best to protect generous parents and/or lucky children to ensure all interests are protected.

Banks will often dictate the arrangements. However, a section 21 agreement (and perhaps a property sharing agreement in the case of option 2 above) is a vital tool in recording the underlying intention of the parties.

Our Family team would be happy to discuss your options with you.