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Topic: Asset Protection and Divorce



Scenario

You want to support your daughter and your son-in-law in their first home purchase journey, by providing \$100,000 toward their purchase.

Whilst your daughter's marriage is healthy, no one can predict what the future holds.

You are worried that the money which you contribute to the home purchase, will form part of the marital estate upon a divorce.

Due to your respect for your daughter's marriage, you do not want to put her in a position where she signs a binding financial agreement.

Whether a loan will be deemed a gift will depend on the evidence, factors which will be considered include:

- a. whether there is a formal loan agreement in place
- b. whether there is security in place
- c. whether the terms of the loan agreement have been complied with

A properly drafted loan agreement will require the contribution to be repaid upon a breakdown of the marriage and will not form part of the marital estate.

Please feel free to contact one of our lawyers to discuss your situation in detail on 8880 6505 or email us at nathan@abplaw.com.au.

Potential Consequences

After 4 years of marriage, your son-in-law decides to separate from your daughter.

When determining what each party's entitlement is to the marital estate, the court will consider the \$100,000 you contributed as part of the marital assets.

What you should do

To avoid your contribution being considered a gift and forming part of the marital assets, the contribution should be made by way of a loan.

But it is important to note that if the loan is viewed by the court as not being genuine (that is, there is no intention of the loan being enforced), the court can deem the contribution as a gift and remain part of the marital estate.

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主题：财产保护与离婚



假设情境

您计划资助您的女儿和女婿十万澳元，用于购买二人第一套婚房。

虽然二人当前感情稳定，但未来总是难以预测。

您担心您对二人购房的资助，会在二人离婚时作为婚内所得财产而进行分配。

由于您尊重女儿的婚姻，您也不愿与她签订有法律效力的融资合同。

潜在后果

在经历四年婚姻之后，您的女婿决定与您的女儿分手。

法院在分配两人婚内财产时，会考虑您对二人购买婚内财产中所赞助的十万澳元。

您应当如何做

为了避免您的出资被认作赠与，从而构成二人的婚内财产，您的出资最好采用贷款的形式。

然而，如果法院认为您的贷款不是真实的（也即，您并没有意向来执行回收这笔贷款），法院将认定这笔出资作为赠与，依旧构成二人的婚内财产。

贷款是否会被认定为赠与将取决于提供的证据。影响这一认定的因素包括：

- 是否有正式的贷款合同
- 是否有抵押/担保等
- 贷款合同条款是否被遵守

正规的贷款合同会要求婚姻破裂后归还贷款，并约定贷款不构成二人婚内财产。

欢迎致电 8880 6505 或发送邮件至 nathan@abplaw.com.au，我们将随时为您服务。