

FAMILY ARRANGEMENTS: A GROWING PHENOMENON

With house prices soaring, more restrictive lending criteria being enforced by the banks and an aging population we are seeing a significant increase in the number of non-conventional 'family arrangements' being entered into. Whether it be mum and dad helping their children into a first home, parents and adult children pooling their resources to acquire a bigger property for them all to live in, children buying into their parents homes to free up equity and avoid reverse mortgages, personal loans between family members or people taking on guarantor obligations to enable family members to secure finance, it is clear that family arrangements of this nature are becoming increasingly necessary.

Most families trust each other to do the right thing and, as such, it may seem completely unnecessary to them to formally document their arrangements. However, it can be extremely dangerous to rely on trust alone. Family dynamics can change significantly over time and can be effected by unforeseeable events such as separation, death, bankruptcy or entering into new relationships.

If the parties rights, obligations and entitlements are not clearly defined there is potential for shared assets or lent money to become unnecessarily tied up in relationship property disputes in the event of separation, estate claims in the event of death or claims by creditors in the event of bankruptcy or financial hardship.

Entering into a formal arrangement forces the parties to discuss their intentions and agree on how the arrangement is to work at the outset. This lowers the risk of misunderstandings or disputes arising between the parties, ensures all parties know where they stand, avoids assets getting incorrectly caught up in third party claims and provides a clear record of each party's rights, entitlements and obligations should the unforeseeable happen.

So although it may seem an onerous task to formally document a private arrangement between family members, doing so will ensure that you are best placed to deal with disputes or a worst case scenario should it ever arise. By lowering the potential for disputes to arise you are also helping to protect your family from irreconcilable breakdowns.

If you are part of an existing family arrangement or considering entering into one you should discuss the circumstances with your legal advisor to ensure you are adequately protected and, as with all agreements, independent legal advice should be obtained by each party prior to signing anything so that each party has a clear understanding of the effects and implications of their arrangement.