

FAMILY LOANS AND ESTATES

A Dad loaned one of his sons (he had 2 sons and 2 daughters) say \$100,000. This son and his Dad didn't see any need to document their agreement. The son made regular repayments to his Dad until the Dad died suddenly. He had left a Will distributing all of his assets evenly between his 4 children but made no mention of the loan. The other 3 children found out that the "loan" did not form part of the Dad's Estate.

This is the cold, hard reality of informal family loans. If the person making the loan dies without documenting the agreement in any way then the loan is deemed to be a gift to the borrower and does not form part of the deceased's Estate. The person who received the loan could make arrangements with the other beneficiaries in the Will to address any extra benefit they had received, but they are not under any obligation to do so. Families, favourites, money and death provide for an explosive situation.

By making an informal loan to his son, the Dad may have unwittingly been involved in setting off a bitter family dispute which could have even occurred during his lifetime. If the terms of the loan were not at "arms length" then the other 3 might have thought that their brother received favoured treatment from Dad in getting the loan in the first place. It may have been unclear whether their Dad's generosity or means would have extended to all four siblings getting the same loan with the same terms, including optional repayment!

A family loan agreement would have provided all parties, including other family members, with greater certainty and protection.

Any loan agreement needs to set out key terms including the loan amount, the manner of repayment, interest charges (if any) and consequences of the borrower's default. These terms show that the lender is serious about the loan being repaid and the borrower is serious about repaying it. The significance of a documented family loan for other family members, such as in this case, is that it would have formed part of the Dad's Estate.