



THE IMPORTANCE OF DOCUMENTING FAMILY LOANS

Family loans are not uncommon. When a loved one needs help financing a new business, purchasing their first home or overcoming financial difficulties, it is natural to want to help out as much as you can.

However, this does not mean that you have to put yourself in an uncomfortable position and run the risk of stressing family relationships. You should seek help to structure a family loan and be savvy about it.

Why should I have a loan agreement?

Having a loan agreement in place will provide you and your family members with certainty and make both of your expectations clear. This can prevent family disputes and put you at ease knowing that you can enforce your agreement.

Although your family members might not expect a loan agreement it can benefit them too.

It shows the rest of the family that they are serious about repaying the loan and can help prevent potential family tension and unease.

When things turn 'The bold and the beautiful'

If family relationships happen to break down, the last thing you need is to have disagreements over loan repayments.

What should a loan agreement contain?

1. TERMS

The terms of your family loan agreement are up to you. However, it is absolutely necessary that the terms of the loan are specific. If the agreement is vague or uncertain, you run the risk of not being able to enforce it!

2. INTEREST

Make sure to cover whether interest is payable, the rate and the dates due for repayment.

3. SIGNED AND DATED

The loan documents should also be signed and dated and each party should retain a copy.

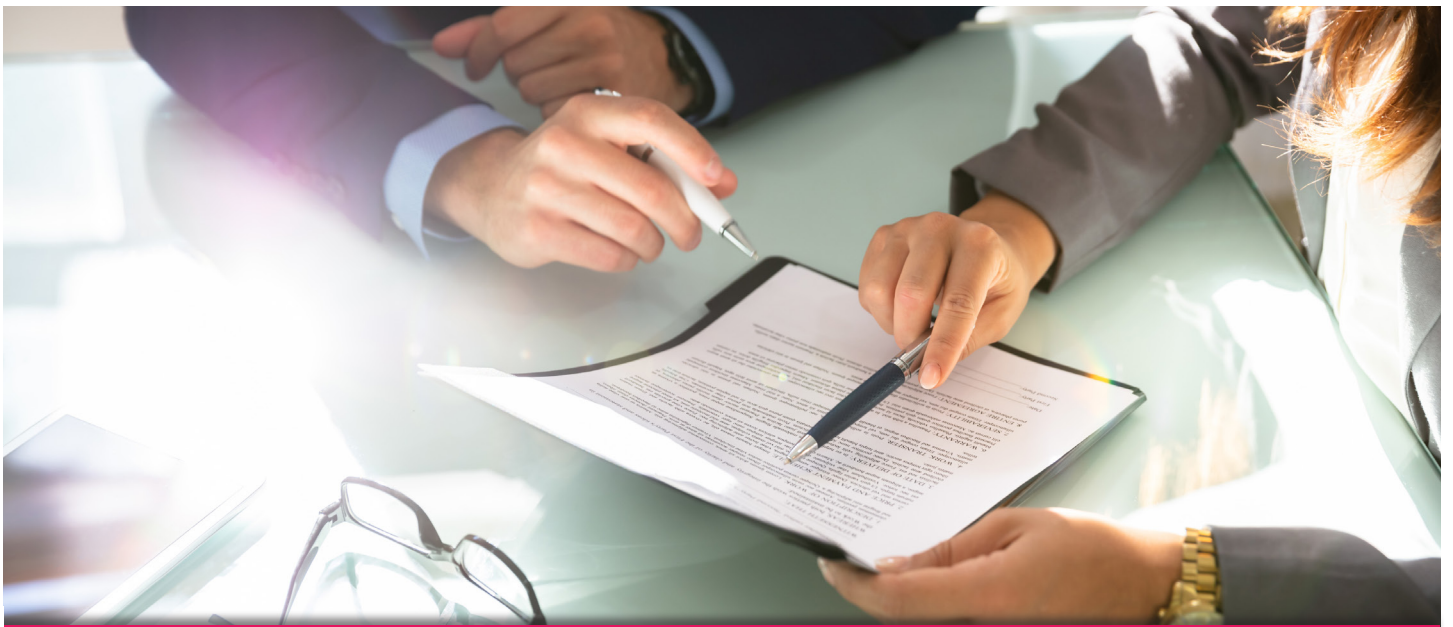
Depending on the circumstances, you might want the loan to be on commercial terms.

Interest rates can be fixed, variable or even pegged to the home loan rates of a commercial lender. If you are concerned about being repaid on time, you may want to consider setting a higher interest rate should your family or friends default on payment.

If you plan to loan a large amount of money you would be wise to secure the loan in some way.

If you have helped a loved one purchase a home, you should support the loan with a mortgage or place a caveat over the property.

The word caveat is a Latin word loosely meaning 'warning'. A caveat acts as a warning that another party has an interest in the property, usually because they are



THE IMPORTANCE OF DOCUMENTING FAMILY LOANS

owed money by the owner of the property, but have not formally registered their interest by way of a mortgage.

A mortgage is a more prudent choice, as a caveat will not prevent the property from being sold. Caveats simply prevent the property being dealt with without your knowledge, buying you some time to protect your interests. Another option is to secure the loan with personal property from the borrower. If you are unsure of how to structure any of these securities, obtain legal advice.

Do I need to consider other legislation?

It can be all very confusing but we have the answers for you and can give you peace of mind!

How do I obtain agreements and documents?

Law Central is an automated legal document provider that enables individuals to build their own Australian legal documents online by answering questions. Each legal document is written and maintained by a lawyer and signed off by the authoring law practice.

Should you need to customise your legal documents or require more details, seek legal advice.