

'bank of mum and dad' turning into a property gifthorse



There are risks inherent in lending money to family members for property using good-faith agreements.

123RF

There is a wise old adage: "Neither a borrower nor a lender be."

Polonius' fatherly warning to Laertes in *Hamlet* that he who lends often loses a friend, along with his loan, remains as relevant now as it was four centuries ago.

Had Marian and Trevor Warin listened to his advice, they might never have endured 20 years of unpaid loans that ended with them taking their own daughter to court.



SUPPLIED

Colleen Warin has been ordered to repay the loan her parents made to her - but so far they have not received any money.

Just as in *Hamlet*, theirs is a tragic tale of suspicion, mistrust, and families at each other's throats.

READ MORE:

- * [Most renters would struggle to afford a home, new government measure shows](#)
- * [Elderly parents successfully sue daughter for \\$367,000 over unpaid loan](#)
- * [Mum who loaned daughter \\$360k says 'it's all terrible'](#)

The Warins – who have won a court order for the repayment of Colleen's \$367,000 debt – say they built up a fortune of \$3 million over their long working lives, but now they're reduced to living off their pensions.



SUPPLIED

The Warins family before property loans turned into court action. From left, Marian Warin, Trevor Warin, daughter Colleen and son Nigel, who has been helping his mother in her court fight with Colleen.

According to one legal expert, there are families like the Warins all around the country, feuding over property lending disagreements. The only difference is we don't get to hear about most of the cases, because they are often settled out of court.



Lawyer Alan Knowsley, of Rainey Collins, says such cases are likely to increase as borrowing from parents becomes a necessary leg-up on to the property ladder.



MAKSYM YEMELIANOV/123RF

Don't just sign the dotted line on the mortgage - draw up some clear agreements between family members too when it comes to home loans, lawyer Alan Knowsley warns.

"Unless people are writing down what they are doing, there will be more arguments," Knowsley warns. "It just happens again, and again, and again, and people don't learn from that. They think 'My child wouldn't do that to me!'"

[Ad Feedback](#)

But he adds there are ways to avoid getting into an ugly money scrap with a family member over a home loans.

And if it does end up in court, with family ties shredded into ribbons, there are options to get your money back.

FAMILY FEUDS:

Advice from lawyer Alan Knowsley

I want to borrow from my parents to get on the property ladder, but they're uncomfortable at my suggestion that we should involve lawyers. Should I push the topic?

Yes, says Knowsley. It might seem an unpleasant topic now, but these agreements do not need to be as emotionally loaded as a marriage "pre-nup", or even need to involve a lawyer.

Writing down the terms clearly is not just about trust, it is also about clarity: outlining the terms of a loan, including a repayment deadline and agreements on whether and how much interest will be paid means everyone is clear from the outset.

"If you've got a piece of property, it doesn't do anyone any harm. So if there's any issue with recording [the terms of a loan], you should be worried about doing it."

My daughter's shackled up with some bloke, and I don't like the cut of his jib. But they want to borrow a deposit for their first home – what can I do to protect myself if it ends in a split?

This is a bread-and-butter property dispute. If the deposit has been gifted to the couple, your child's partner is entitled to claim half of it as relationship property if the union dissolves, and this happens all the time.

I borrowed money to buy a house, but I cannot repay my parents in my lifetime. Reckon I spin my debt as an "inheritance advance"?

Absolutely, says Knowsley, assuming your parents agree to this. But they will need to record any inheritance prematurely gifted clearly in their wills, so that you, and any other heirs – like, say, envious siblings who were not gifted a house deposit – can avoid a scrap over a deceased estate and even the property your parents helped you buy.

I'm in the midst at a World War III-level family breakdown and I just want my money back. Now what?

In a best-case scenario, the debtor won't have bled away their assets and life savings. A judgment in your favour allows the court-appointed bailiff to arrange for assets such as houses and cars to be seized to repay the debt.

But if they still owe anything on the mortgage, the bank gets first dibs from the sale's proceeds.

If you know the debtor has other assets, such as investments or a savings account, you can also ask their bank for a garnishee order, which means you can dip into their accounts.

If they have no assets but they have a job, an attachment order can be made against a person's income. Their employer, or the Government if they're on a benefit, directly repays the loan debt in instalments to you.

We had no written agreements, our property scrap went to court – but we won't let this destroy our family. Can we negotiate?

If everyone is agreeable, both sides can draw up a repayment plan of their choosing. If the creditor has a ruling, the courts are able to enforce the debt repayment for six years, with an option of extending it another six years from the last payment if necessary.

What if they've got nothing and I don't ever want to see their money-grubbing face again?

Knowsley's advice: "If you really don't like your child, and want to get them back, you can just bankrupt them."

- Stuff