PARENTS AND CHILDREN

GIFT OR LOAN?

Facts

The mother paid $165,000 to her daughter and son-in-law when they purchased a home in the names of the daughter and son-in-law. The intention was for the mother to also live in the home.

Over time the relationship soured and the mother was asked to leave.

The daughter and son-in-law claimed that the contribution by the mother was a gift (at law called an "advancement").

Outcome

The court concluded that the mother had an indefinite right to live in the property and was entitled to the return of her contribution and granted her security over the home.

The court rejected the argument that the payment was an "advancement" because there could only be an "advancement" if the payment had been made only to the daughter. As payment had been to both daughter and son-in-law the law of a presumed "advancement" did not apply.

Lesson

Document financial arrangements between parents and children. Gifts and loans need to be considered as part of estate planning as a substantial gift could be deemed to be an "advancement" against a child's entitlement under a will.

See Smallwoods Lawyers to ensure that your estate planning objectives are met.

For advice on estate planning please contact Richard Smallwood on 9939 3446

SMALLWOODS LAWYERS
Suite 146, First Floor, "Lifestyle Working"
117 Old Pittwater Rd, BROOKVALE
(Behind Warringah Mall)

Ph 9939 3446
www.smallwoods.com.au