

Rather a Loan than a Gift

November 2019

**“Debt is one person’s liability,
But another person’s asset.”**

Paul Krugman





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Soaring prices of houses has made owning a first home a virtual impossibility for our children. They have no choice but to continue to live with us.

Feeling their frustration, it is a growing trend nowadays for parents to lend a helping hand in the purchase of their child's first home.

Whether help from parents come in the form of a loan or an outright gift will have different legal implications.

A *loan* of money must be repaid.

A *gift*, on the other hand, does not. The gift may be a gift of cash (*cash gift*) for the child to buy the house or a gift of a house itself (*house gift*) bought directly in the child's name.



A loan is a debt.

A home bought with a loan creates a debt which the borrower-child owes parents and must be repaid.

A gift is an asset.

An outright gift, whether in the form of a cash gift or a house gift, results in the child having a fully unencumbered asset in his/her name and no debt to repay. Once made, the gift belongs to the child. The child has no legal obligation to return it to a parent.

In both instances (of a loan and gift), the child is the owner of the house. But with a loan, the house ownership comes with the obligation to repay a debt. Depending on the type of loan, it can be tied to the title of the house. For example, a *secured loan* can be created by having a mortgage over the house which gives the parents a bagful of rights.

In a twist of circumstances, a loan which is usually regarded as a liability, can be an asset. It can shield the house from the claws of a divorcing in-law or a child's creditors.

Ironically the loan debt turns into an asset for the child.

This article explores the benefits of granting a *loan* to a child to buy his house rather than simply *giving* one to him.

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But another person's asset.* ”

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Benefits of a loan

Set out below are reasons why a loan may be preferred.

It can

- ▶ *Protect parents by dispelling the idea that they are trying to own another residential property without having to pay any additional buyer's stamp duty.*

A Singaporean child, who does not own any residential property, pays no additional duty. A parent with an existing cache of such properties pays anywhere between 12 to 15 percent additional stamp duty for yet another residential property.

A Singapore permanent resident child pays 5% additional duty as compared to the 15% payable by his/her permanent resident parents buying a second or subsequent house.

Because of the additional duty payable by a parent buying an extra residential property, it is not uncommon for parents to buy the property in their child's name.

The existence of a loan however dispels the idea that the child is holding the house on trust for the parent as a strategy against the parent having to pay the additional duty.

- ▶ *Protect parents from an ungrateful child with a short memory.*

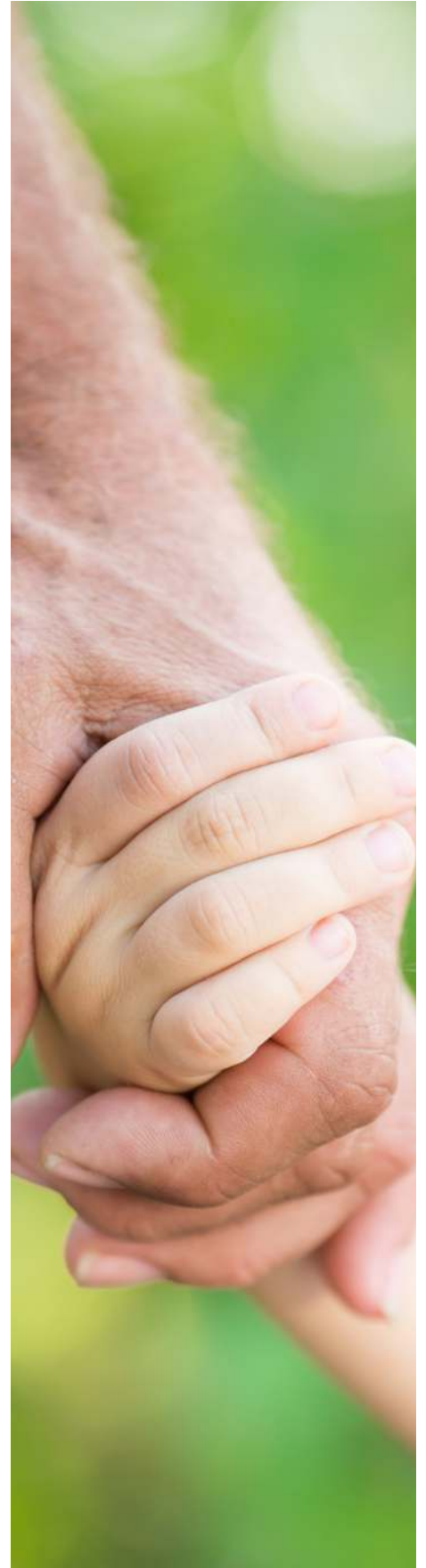
After bagging the inheritance given in advance, a child may neglect his parents.

However, armed with the financial debt in favour of the parent which the child must repay, parents can "turn the screws" by recalling the loan.

In a 2016 High Court case, *Chin Kim Yon v Chin Kheng Hai*, a father gave his son and daughter cash to buy a house. The house was put in the children's names.

Because of the parent-child relationship, the father was presumed to have advanced the money as a gift. Under law, it is known as a *presumption of advancement*. The father had to prove that this was not the case and he failed to do so.

Had a loan, with its accompanying documents and semblances of a lender-borrower relationship been present, the decision may have been different.





- ▶ *Help the child fend off ownership claims from a divorcing spouse in a divorce Court.*

A house with a mortgage is not an attractive asset to go after. The debt secured by the mortgage must be repaid. A divorcing spouse may decide to leave the house alone rather than have to deal with repayment to “ex-in-laws” after the divorce.

- ▶ *Give parents the time they need to get to know their child’s spouse better and reassure themselves that the marriage is stable.*

The parent can waive the repayment of the loan at any time.

- ▶ *Give parents the assurance that the loan will be repaid when the child is no longer in a position to enjoy the house.*

If the child passes away, the estate of the child must repay the loan.

If the child is married, the spouse may inherit the house under the child’s will. If there is not enough money in the child’s estate to repay the loan, the house may be looked to for repayment. The widowed spouse can take over the repayment.

If the child dies intestate (ie. without making a will) and there are no children of the marriage, the intestate laws will see to the equal division of the house between the spouse on one side and the parents on the other. There are many permutations as to what the parents are able to do to obtain repayment of the loan and the half share of the house or its equivalent.

A different scenario presented itself in a 2016 High Court case, *Tien Choon Kuan v Tien Chwan Hoa*. A father paid 94.4% of the purchase price for an HDB flat. His son paid the remaining 5.6%. The title deed however showed them to be 50-50 owners. The father subsequently asked the Court to declare that on top of his 50% share, he owned the 44.4% belonging to his son. The son’s wife who was undergoing a divorce laid claim to half of the son’s (her husband’s) 50% share. The father found himself having to prove his 44.4 % share and then fending off his daughter-in-law’s claim for half of it.

If a loan secured by a house mortgage had been granted, the father could have insisted on its repayment.

- ▶ *Protect the child who may place a cash gift in a bank account held jointly by the child and spouse until the right house comes along.*

Purchase monies withdrawn from a joint account raise a strong *presumption of advancement* in favour of the spouse that the monies were intended to be shared. Therefore the ownership of the house becomes a shared one too. Loan is preferred to a cash gift.





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But bear in mind a loan's downsides

- ▶ If the *loan* is not enough to pay the full amount of the purchase price, the child may have to obtain a housing loan from a bank. The existence of the parent loan will affect the size of the housing loan the child can obtain.

- ▶ **TDSR (Total Debt Servicing Ratio)**

The Monetary Authority of Singapore has placed a 60% limit on the debt a buyer can service from his income. The parent loan is part of the 60%.

- ▶ **LTV (Loan to Value Ratio)**

The same Authority controls the amount of the aggregate loan to be taken to buy a house to the value of that house. The parent's loan is part of the loan component.

- ▶ Unless the parent's loan is secured by the house, it offers no protection against a creditor looking at the house as a source of monies to settle a debt.

Because a creditor will have to stand behind a parent's mortgage, it serves as a deterrent.



The plus point for a gift of cash or a house gift is that

the *Women's Charter* treats inheritance from a parent to a child as an asset that does not fall into the same pool of matrimonial assets which are divisible between husband and wife in a divorce. The inheriting party gets to keep his inheritance. The *inheritance* will therefore not be a matrimonial asset unless it *becomes the matrimonial home* and *it has been substantially improved during the marriage by the other spouse or by both of them.*

If a loan is granted, and its tenure runs into period when a child marries, its repayment reduces the monies available for the couple. A door may open for the spouse to argue for rights over some part of the house.





Your intention

Both parent and child must be clear on whether they are entering a debtor-creditor relationship. Their intention must be a common one. The circumstances and documents must reflect this intention. It will not do to create evidence at a later stage especially when the possibility of a third party's claim looms ahead. Therefore there must be proof from the beginning, when the monies change hands, that a loan was intended.

Because the parties are in a parent-child relationship, there is also the *presumption of advancement* to dispel. The law *presumes* that due to their nurturing relationship, the parent must have intended to make the gift of cash.

Because the Court will look at *all relevant circumstances*, there is a need for the consistency of evidence showing intention.

Although the facts at the beginning are important, the Court will look also at the facts that arise after that. These must corroborate the debtor-creditor relationship. For example, if a lien over the title of the house is taken as security, the title deed must be in the parent's possession.

If by chance, the repayment of the loan is subsequently waived by a parent, this fact too must be registered and the reasons reduced into writing.

Ultimately a loan should for all intents and purposes operate like one.

The closer it resembles a commercial lending arrangement, the stronger will it be able to stand up to challenges.



“ It ain't what you don't know that gets you into trouble.
It's what you know for sure that just ain't so. ”

Mark Twain

Guidance from your lawyer should be obtained.

“ Worrying is like paying a debt you don't owe. ”

Mark Twain





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About Amita

Founding member of and Consultant at RHTLaw Taylor Wessing LLP, Amita has more than 2½ decades of experience as a practicing lawyer. She started off in the areas of Property, Banking and Finance and continues to provide valuable counsel in these areas. To support the push by the Singapore government towards building a Private Wealth industry, Amita subsequently carved out and developed the Private Client practice. Her journey to build an ecosystem connecting her professional life of law, her passion for art and returning back to society is a continuous one.

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