



## Beware the Bank of Mum & Dad

### Pitfalls in Loan Guarantee Advice

In 2023, with rising inflation, a tough economic climate, and the housing market out of reach for many young people, parents often worry their children won't enjoy the same opportunities they had. Understandably, parents want to help their children to get a solid start in adult life, by helping them to get a foot on the property ladder. This is when the 'Bank of Mum and Dad' comes in.

As a solicitor, you may be approached to help families with a range of 'Bank of Mum and Dad' transactions. Despite their deceptively simple appearance, such transactions have pitfalls that can leave solicitors at risk.

Commonly, parents help out their children, either with property purchases, or business ventures by acting as a guarantor on a mortgage or loan. Such a guarantee will often be secured against the family home. A parent may be brought to the solicitor's office by their child for the purpose of executing loan documents. A certificate of independent legal advice is a common requirement for the completion of loan documents where there is a guarantor. There will often be a sense of urgency to complete the paperwork and secure the loan. While it may appear that completing a simple document to help get finance across the line is a relatively benign proposition, it's this certificate and the



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Even if relationships are harmonious now, the death of a parent, a divorce or a change of financial circumstances can cause sudden and drastic changes to the family dynamic. This may leave formerly aligned family interests in direct conflict.

legal services around it that might expose you to a professional negligence claim if things go wrong.

While a family may present as harmonious, and to have interests that are aligned, it's important to remember that family dynamics are complex. A parent and their adult child who approach you for the purpose of obtaining independent legal advice on a guarantee will likely appear to have common interests. However, it's important to turn your mind to what may happen if those interests diverge. If the borrower defaults on the loan, a parent, who may be retired and have no capacity to earn an income, may face the loss of a previously unencumbered family home.

Rule 11 of the Legal Profession Uniform Law 2015 provides that a solicitor and a law practice must avoid conflicts between the duties owed to two or more current clients. This includes a potential conflict between the guarantor's interests and those of their child.

When advising parents and adult children on loan guarantees, the following can help you manage the risk:

- ▼ Be alive to potential conflicts of interest between the guarantor and the borrower, even if they are in a close family relationship;
- ▼ If you are acting for one party, refer the guarantor or borrower elsewhere for independent advice;
- ▼ Provide advice to the guarantor in a private place away from the borrower;
- ▼ Be aware of any language barrier that the client might face, and be proactive in engaging an interpreter if required;
- ▼ Be aware of potential capacity issues if the guarantor is elderly;
- ▼ Document your advice in correspondence or a detailed file note – these documents will protect you in the event of a claim.