

# BE CAREFUL WHAT YOU SAY ON BANK LOAN APPLICATIONS

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Quite often people ‘over-state’ their financial position when applying for a bank loan. They then ‘re-clarify’ their actual financial position in court when they are going through a property settlement. Be careful, it will catch up with you.

Not only does the Family Court have the ability to “reverse” commercial transactions if those transactions result in an anticipated court order for property settlement being defeated, but false information in a bank loan application severely damages your credibility.

For example, if a spouse transfers a real estate from their sole name to a third party, effectively reducing the asset pool available for distribution, the court has the discretion to reverse that transaction and include the real estate in the matrimonial property pool for division.

The court recently had to consider such a case.

The relevant facts were:

- The relationship was for 9 years and the couple had 2 children together.
- There was evidence that the husband had transferred assets to his brother and other associates.
- The husband filed a Financial Statement (a court document) in the proceedings declaring his net worth was approximately \$380,000.
- Evidence showed that 18 months prior to separation the husband declared in a bank loan application that his net worth was approximately \$1.1 million. Just prior to separation the father stated that his net worth was \$1.66 million.
- Two months later, the husband filed his Financial Statement in the proceedings declaring he was \$150,000 in debt.
- The first bank application indicated the husband’s income was \$230,000 per annum, however in his Financial Statement the husband indicated his income was \$47,000 per annum.

The court found that the evidence in the bank applications was relevant, as it showed not only that the husband had previously owned significant assets and was the “actual” owner of those assets, but this also went to the husband’s credibility. The court set aside the real estate transfers and included that back into the net pool.

The wife was entitled to a property settlement amounting to 85% of the parties’ available assets.

To protect yourself when making any decisions in regards to your property and other assets, you must seek specialised legal advice. Failure to do so, may result in outcomes that are not in your best interest.