Q: How can I help out my child and their spouse to purchase a home, but keep my contribution safe if they breakup?

A: In this case, it is necessary to plan up front, or risk losing your contribution if your child separates from their spouse. One of the easiest ways to protect a contribution made to your child is to classify it as a loan, in a written document signed by all parties involved, preferably with payment terms and an interest rate, even if repayment is delayed. Loans are typically excluded in the division of property by separating spouses, and as such, this money would need to be repaid to you at separation.

Another solution is to go on title to the home, but preferably not on the mortgage. This protects your investment better in the event of title transfer or sale.

In a situation where one side has contributed more towards the purchase of a home than the other, another option to protect the larger contribution is to enter into a co-habitation agreement or a marriage contract which clearly sets out what each party contributed to the house purchase, and whether those initial contributions are to be excluded from any future division of property in the event of a separation. This is necessary because in the absence of a written agreement, married spouses typically must divide the value of the matrimonial home fifty-fifty, even if the home was owned by only one of the parties prior to the marriage or only one party is on title. These agreements should be signed prior to the parties living together or marrying, so you are best to seek legal advice earlier rather than later.

Your friends at Shank Law.