

FINANCIAL AGREEMENTS



Financial Agreements (sometimes referred to as “pre-nuptial agreements”) are a type of agreement designed to enable couples who are about to commence a relationship; are in a relationship; or have ended a relationship; (either marriage or de facto) to agree upon issues such as property settlement and maintenance.

Their primary function is to create a binding agreement between couples to regulate what is to occur upon any separation, without the need for Court intervention. These agreements enable parties to tailor their financial agreements privately and to provide for a financial outcome that they consider appropriate and personal to them should they separate without the intervention of a court process which can be invasive and unpredictable.

To be binding each party makes an informed decision to accept these arrangements after first receiving independent legal advice. In this way, parties can plan for their future together, or apart, rather than a Court intervention in the event of separation.

Such agreements can deal with existing property or property acquired in the future, be it by one party, or acquired together, making them a useful estate planning tool.

Collectively, our team of family lawyers at Small Myers Hughes have decades of experience in preparing, reviewing and providing advice on financial agreements for marriages or de facto relationships as well as estate planning. While raising the prospect of entering such an agreement prior to or during a relationship is something that can be a difficult topic to approach with a partner or loved one, obtaining clear legal advice as to potential planning options, potential risks and the advantages and disadvantages of obtaining an agreement, can certainly assist in discerning whether a financial agreement is right for you.

Why get one?

There are several advantages to entering into such an agreement, including:

- the ability to quarantine particular property from a matrimonial or de facto property claim;
- certainty as to what is to occur in the future in the event of a separation;
- certainty as to each parties' rights to monies received in the future, including by way of inheritances, windfalls and gifts;
- couples having a better ability to discuss and agree upon such matters prior to a separation, as opposed to after a separation, when emotions, tension and animosity can greatly influence.

There are other benefits, in that financial agreements can be used in the context of asset and estate planning and family structures. For example, family law property disputes can often involve arguments over a gift, loan or inheritance received from a parent or family member. It is not uncommon for parents or other family members to be concerned as to the prospect of their loaning, gifting or making provision for their son, daughter or relative, if that loan, gift or provision will then be the subject of a potential matrimonial or de facto claim, should the son, daughter or relative separate from their partner.



It follows that we not only encourage spouses and de facto couples to obtain legal advice as to the utility of a financial agreement, but also encourage parents and family members to be aware of the utility of such an agreement as part of their family structuring.

Another benefit relates to de facto relationships; in that disputes can arise (and significant fees can be incurred debating) as to whether a couple are or were in fact, living in a de facto relationship. In this regard, many a 'boyfriend' or 'girlfriend' have been exposed to their ex-partner claiming a de facto property entitlement, when the existence of a de facto relationship is not agreed. A financial agreement can assist with locking in any potential entitlement or claim, by addressing the question before it becomes contested.

Who can get one?

Financial agreements can be entered into by:

- parties contemplating entering into a de facto relationship (including same sex couples);
- parties contemplating marriage;
- parties living in a de facto relationship (including same sex couples);
- married couples;
- any of the above, after separation or divorce.

Do they protect my property and avoid litigation?

If done properly, they are the best protection available at law to protect property from a family law or relationship based claim and avoid the costs (financial, emotional and time) of litigating.

That said, a financial agreement can be challenged in particular circumstances. That means that litigation may ensue after a separation, as to the effect of the agreement itself.

For this reason, it is critical that proper advice is sought and the right strategy is adopted to maintain the integrity of any financial agreement and ensure that its exposure to attack in the future is kept to a minimum. We can assist with providing advice as to appropriate strategies in this regard.

Can I prepare one myself?

In order to be recognised as a binding agreement, the document must comply with several technical requirements.

For example, each party must have had independent legal advice as to particular matters prior to signing such an agreement and a lawyer must sign a statement as to the provision of legal advice. Requirements such as these make it essential that the document be prepared by (and certainly considered by) lawyers acting for each party to the agreement. Further, the prospect of the agreement being challenged in the future is such that it is crucial that any agreement be carefully considered by an expert to ensure that it firstly complies with all legal requirements and secondly, to minimise exposure to any potential challenge in the future, to the maximum extent possible.

I would like assistance with a Financial Agreement – what do I do?

The first step would be to arrange an appointment with one of our Family Law team members, which can be arranged via contacting our Client Relationship Manager, Michelle Silipo on (07) 5552 6601. A confidential, initial consultation can then be arranged to discuss your circumstances and any queries that you may have.