
Financial Agreements

Most family law disputes about property and maintenance are finalised with consent orders. The other option, if the parties agree, is a financial agreement.

Financial agreements can deal with:

- all of the property of the marriage or relationship
- just one aspect, such as superannuation or inherited property
- only maintenance
- property and maintenance
- child support

We can advise you whether a financial agreement is appropriate for you.

Pre-nuptial agreements

Pre-nuptial agreements are becoming more common. A pre-nuptial agreement sets out how the property of you and your intended spouse is divided if you separate at some time in the future. It can also deal with rights to maintenance, usually by the parties agreeing that neither party can claim it.

Pre-nuptial agreements are most useful if one or both parties:

- have significant assets at the start of the relationship and want to ensure that those assets are protected from any claim in the event of separation
- have business interests they want to protect from a family law claim
- have received or are likely to receive an inheritance
- have been through an earlier divorce, and want to isolate the assets they received from an earlier property settlement
- have children from a previous relationship, and want to preserve their assets for those children

A pre-nuptial agreement must be drafted very carefully as it tries to deal with circumstances that might arise in the future, such as the birth of children or a party's ill health.

A couple who are entering into a de facto relationship can also make this kind of financial agreement.

Financial agreements after separation

If you and your former partner reach an agreement about how to divide your property and/or maintenance after separation, you can use a financial agreement, Consent Orders, or a combination of both. We can advise you which option is best in your particular circumstances.

Requirements to make a financial agreement binding

A financial agreement will only be binding if:

- it is signed by all parties to the agreement
- before signing the agreement, each party is provided with independent legal advice
- each legal practitioner signs a statement confirming that the required legal advice has been given
- the signed statements of independent legal advice are exchanged between the parties
- the agreement has not been terminated or set aside by a court

Can a financial agreement be set aside?

In certain circumstances, a court can set aside a financial agreement. Details of the grounds upon which an application can be set aside are in our Setting Aside Financial Agreements fact sheet.