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Family Law
Financial Agreements

Guide to Financial Agreements

Do I need a Financial Agreement?

Financial Agreements made before or during a de-facto relationship or marriage are commonly entered into when the parties wish to determine how the assets that they have accumulated before the relationship started will be treated.

A further reason that some people choose to enter into a Financial Agreement is to agree upon how your assets will be dealt with in the event of a separation, obviating the need for negotiation or potential litigation after a separation.

Although the prospect of entering into a Financial Agreement may not sound very romantic at first, a Financial Agreement may have the effect of promoting further harmony between you and your partner by preventing conflict or confusion about your financial assets in the event of separation or death and reducing the possibility of resorting to litigation.

What does a Financial Agreement do?

A Financial Agreement may be made:

- ✔ Before commencing a de-facto relationship or marriage;
- ✔ During a de-facto relationship or marriage; and/or
- ✔ After the break down of a de-facto relationship or marriage.

A Financial Agreement can deal with property in the event of separation only or separation and death. Our solicitors are able to advise how you can ensure that your Financial Agreement will also be binding on your heirs, executors, administrators and personal representatives.

A Financial Agreement can help you decide and determine what will happen to the assets and superannuation you held at the beginning of the relationship, what will happen to the assets and superannuation you acquire together during the relationship and decide whether a party will receive spousal maintenance in the event of separation or death. It may also regulate how your financial assets will be characterised during the relationship, for example: how joint expenses will be paid for or how mortgage repayments will be paid.

Will my Financial Agreement be binding?

A Financial Agreement is binding only if:

1. the agreement is signed by all parties; and
2. before signing the agreement, each party was provided with independent legal advice from a legal practitioner about the effect of the agreement on the rights of that party and about the advantages and disadvantages of making the agreement; and
3. either before or after signing the agreement, each party was provided with a signed statement by the legal practitioner stating that the advice was provided to that party; and
4. a copy of the statement of advice is given to the other party or to a legal practitioner for the other party; and
5. the agreement has not been terminated and has not been set aside by a court.

There are some circumstances in which a Financial Agreement may be set aside by a Court. Some of these circumstances include:

1. If the Financial Agreement was obtained by fraud or for the purposes of fraud;
2. The Financial Agreement is void, voidable or unenforceable;
3. In the circumstances that have arisen since the Financial Agreement was made, it is impracticable for the Financial Agreement or a part of it to be carried out;
4. Since making the Financial Agreement, a material change in circumstances has occurred;
5. In respect of making the Financial Agreement, a party engaged in conduct that was unconscionable; or
6. The Court may find that the Financial Agreement is not a Financial Agreement under the Family Law Act, for example: it may be determined that the terms of the Agreement were not just and equitable.

You should obtain legal advice from a specialist family lawyer if you have entered into a Financial Agreement which you now feel should be set aside.

What do I need to do to have a Financial Agreement written?

It is strongly recommend that you have a solicitor draft your Financial Agreement. Our specialist Family Law team can provide you with advice and assist you to negotiate with your partner in the event that you wish to enter into a Financial Agreement.