

BFA - Pre-nuptial and Binding Financial Agreements

A Binding Financial Agreement (BFA) that is entered into before marriage is commonly known as a pre-nuptial agreement although no such term legally exists under the *Family Law Act 1975*.

In Australia, parties can legally enter into a BFA that sets out how all or any of their property and/or financial resources can be dealt with and divided in the event of a future separation.

De facto couples (in most states including Queensland) can now also enter into similar agreements both before and during their relationship.

The BFA does not have to be entered into before parties commence a relationship, it can be entered into during the course of a relationship.

There is no compulsion upon parties entering into a relationship or in a relationship to have such an agreement. Often, we find that parties enter into these agreements in order to:

1. Provide certainty;
2. Protect ownership of assets that they bring into a marriage or relationship;
3. Protect ownership of special assets that a party may acquire during a relationship (for example an inheritance);
4. Protect ownership and retain business interests that are bought into relationships;
5. Prevent costly, lengthy and stressful litigation if the relationship does breakdown in the future;
6. Provide peace of mind to couples and security in relation to financial matters in the event of their relationship breakdown.

A Binding Financial Agreement is also commonly used by people entering into a second relationship to protect assets that they both bring into the relationship.

Commonly, we find that the BFA is useful for protecting ownership and retention of other assets that a party may bring into a relationship (for example a rural property handed down through generations to one of the parties).

The Agreements are also useful when inheritances or gifts that are received by a party during the relationship can be quarantined and retained absolutely by that party in the event of a future separation.

It is important to remember, that the Financial Agreements are of no force and effect unless they are binding and drafted in such a matter as to make them Binding under the *Family Law Act 1975*. One should avoid so called easy downloadable 'kits' from the internet and other databases of precedent clauses.

A specialist family lawyer should be engaged to prepare and draft the specific agreement relevant to the circumstances of your case. A specialist family lawyer will be able to ensure that the agreement is drafted to comply with all the strict legislative requirements contained in the *Family Law Act 1975*.

Since the introduction of legislation in 2000, there have been numerous amendments to the *Family Law Act 1975* that have made the ongoing drafting of these agreements both a difficult and precise exercise for lawyers.

In addition, there are developing lines of cases which lawyers need to take into account to ensure the best possible prospects of an agreement remaining binding and providing certainty for the couples who enter into it.

It must be remembered that these agreements are not for everyone. A Pre-Nuptial or Binding Financial Agreement entered into during the relationship has inherently, many uncertainties about it. For example, when one enters into an agreement before one marries, it is difficult to predict with certainty as to what may develop financially and otherwise in each of the party's lives and to how long the relationship will last. It is impossible to predict with certainty the quantum and type of assets that the parties will have at some undetermined time in the future.

At Hartley Healy we have years of experience and specialise in Binding Financial Agreements, from the most straight forward to the more complex of circumstances. You can contact our team to make an appointment to have us prepare the most comprehensive and secure Agreement for you.

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