



Making your family law financial agreement legally binding

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The *Family Law Act 1975* (Cth) outlines the rules for financial agreements for both married and de facto couples. The law treats financial agreements made between all separated couples the same, regardless of marital status. In this blog, we explore the purpose of financial agreements in family law, and importantly, how to make them legally binding.

Note: [*Financial agreements in family law*](#) can be made before a relationship, during a relationship or after separation. Smith Family Law only provides services for financial agreements made after separation.

The purpose of a financial agreement

Financial agreements (sometimes referred to as 'binding financial agreements/BFAs') are designed to [finalise property settlement](#) and all financial matters between the parties to a relationship. Once executed, financial agreements are difficult to set aside.

Financial agreements can address the following:

- [Property distribution](#), including who retains the family home and personal property;
- [Retention of assets and liabilities](#);
- [Division and closing of joint bank accounts](#);
- [Superannuation](#); and
- [Spousal maintenance](#).

Financial agreements are different to [Consent Orders](#), which require an application to be made to the Court and the Court's subsequent approval of the orders. A Financial Agreement made between parties does not need to be submitted to the Court and does not require the approval of the Court before it becomes binding. However, there are other requirements to make a family law financial agreement legally binding.

What makes a family law financial agreement binding?

Although it is not registered with the Court, a financial agreement can be binding if it meets certain criteria. A financial agreement is only legally enforceable if it meets **all** of the below requirements:

- The agreement is signed by all parties;
- Before signing the agreement, each party is given independent legal advice about:
 - the effect of the agreement on their rights; and
 - the advantages and disadvantages of signing the agreement;
- Either before or after signing the agreement, each party was provided with a signed statement by their lawyer confirming the lawyer gave advice about the effects of the agreement to their client;
- A copy of each lawyer's signed statement is given to both parties; and
- The agreement has not been terminated or set aside by a Court.

Notably, a financial agreement is not binding or valid until all parties have signed a statement confirming they have received independent legal advice. Each party must have their own lawyer – the same lawyer cannot act for both parties in a family law matter, including for a financial agreement.

Once the agreement has been executed, one party will keep the original document. The other party will receive a certified copy of the agreement for their records.

A properly executed financial agreement (in accordance with the conditions set out above) is legally binding and is enforceable on all parties. As such, if a party does not adhere to the terms of the agreement, the other party may take action to enforce the agreement.

Can I prepare my own family law financial agreement?

In short, no. Each party to a financial agreement must retain their own lawyer. Financial agreements must include certain provisions and declarations in order to be legally binding.

Most importantly, all parties who sign a financial agreement must obtain independent legal advice in order for the agreement to be valid and enforceable. Without advice from a lawyer on the effects of entering into the agreement, it will not be legal or binding on the parties and will be considered an informal agreement.

Both parties must be willing to enter into the agreement. If your former partner does not want to go down the financial agreement pathway, you will need to consider other options for your property settlement, such as consent orders or mediation. For example, if you and your partner have separated, you may consider resolving matters by entering into Consent Orders or issuing court proceedings

Can a financial agreement be set aside or terminated?

Financial agreements are intended to finalise all property matters between the parties involved. They can also finalise spousal maintenance and superannuation matters. There are very limited circumstances where a financial agreement can be set aside by the Court, such as fraud or if the agreement becomes impractical or impossible to carry out.

Your financial agreement can be terminated if you and your partner enter into a new financial agreement that terminates the previous one or if you and your partner enter into a termination agreement. In both cases, the original agreement is not invalid or set aside, but merely a new agreement is entered into.

Get help from a family lawyer

Negotiating property settlement with your former partner can be difficult and overwhelming. Smith Family Law can assist you in finalising financial matters between you and your former partner by way of financial agreement after you have separated.

To find out if a financial agreement after separation suits your circumstances, contact us to organise a free initial consultation with one of our experienced family lawyers.

Contacting Smith Family Law

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.