



## Pre-Nuptial Agreements or Financial Agreements

*Some of the most commonly asked questions about Pre-Nuptial Agreements or Financial Agreements are discussed on this page.*

### 1. Who should think about making a Financial Agreement?

Anyone who is planning to marry for the first time and is bringing in assets to the relationship or people who are re-marrying and bringing in assets to the relationship. Your children may be thinking of marrying. If you're going to provide them with assets to start of their married life, you may wish to come to an agreement dealing with those assets should the marriage break down. Anyone can think of entering into an Agreement – and everyone should.

### 2. Are Financial Agreements Pre-Nuptial Agreements?

Yes. You may have heard the expression a 'Pre-Nuptial Agreement'. This is a type of Financial Agreement. You can make a Financial Agreement or Pre-Nuptial Agreement, as it is sometimes known, prior to being married in relation to property distribution in the event of the breakdown of the marriage relationship. Also remember that Financial Agreements can be entered into during the course of the marriage or at the end of the marriage relationship. These Agreements are recognised by the Family Court as a way of organising the distribution of assets if you marriage should break down.

### 3. What's the benefit of entering into a Financial Agreement?

Any form of litigation, especially Family Law litigation, can be emotionally draining and expensive. A Financial Agreement can sort out how property is to be distributed from the start. By entering into a Financial Agreement you may save yourself further distress down the line and reaching an agreement before you marry can possibly save you thousands of dollars in legal costs.

### 4. Do you have to go to Court?

No. Each party must have independent legal advice and legal practitioners will need to sign a Statement of Independent Advice, which is either attached to the Agreement or exchanged between the parties or their legal representatives. We can secure the original Agreement for you without cost and give you a copy, as part of our service. Or, if you wish, you can hold onto the original. It's whatever you decide.

### 5. Are these Financial Agreements valid?

Yes. A Court will uphold Financial Agreements, however, to be valid there are certain requirements which must be met. This will include that both parties have signed the Financial Agreement, that the Agreement acknowledges that each of the parties have received independent legal advice in relation to the effect of entering into the Agreement, and



that each of the parties legal practitioners have signed a Statement of Independent Legal Advice which is either attached to the Agreement or exchanged between the parties or their legal representatives.

## 6. Can a Financial Agreement be set aside?

Yes. Upon the following grounds:

- (a) The Agreement was obtained by fraud.
- (b) That there was non-disclosure of a material matter, such as a significant asset.
- (c) That a party to the Agreement entered into the Agreement for the purpose of defrauding or defeating a creditor or with reckless disregard for the interests of the creditor.
- (d) Situations have arisen subsequent to the signing of the Agreement, which make it impractical for part of the Agreement to be carried out.
- (e) There has been a material change in the circumstances relating to the care, welfare and development of the child of the relationship and, as a result of that change, any person who has the responsibility of the child of the relationship will suffer hardship if the Court does not set aside that Agreement.
- (f) That, in the making of the Agreement, a party engaged in conduct that was unconscionable.
- (g) A payment flag is in operation in relation to Superannuation covered by the Agreement and there is no reasonable likelihood that the Flagging Order will be terminated by a Flag-lifting Agreement.
- (h) That the Agreement covers at least one Superannuation interest that is unsplitable.

## 7. How can Bateman Battersby assist me with my Financial Agreement?

Oliver Hagen and his team have vast experience in preparing Financial Agreements. We can provide you with advice on the nature and effect of a Financial Agreement. We can also prepare the agreement and if necessary negotiate with your partner or their legal representative in relation to any amendments.

***If you would like further information, or require assistance, please contact us on (02) 4731 5899 or send us an email by clicking on the 'Contact Us' page on our website.***