



Formalising agreement reached regarding property settlement and parenting arrangements

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Separation does not always mean animosity and disagreement. Partners who are ending a marriage or de facto relationship can often come to an agreement about property settlement and sharing time with any children of the relationship.

If agreement can be reached amicably and quickly, this is the ideal situation. It's less stressful and less costly.

Whilst you and your former partner may have been able to reach an agreement between yourselves in respect of the division of your assets, liabilities and superannuation or parenting arrangements for children of the relationship or marriage, it is important to ensure such agreement is appropriately and formally recorded.

Reaching an agreement without resorting to litigation (going to court) is always preferable, however, once an agreement is reached, it is important that further steps are taken to record the agreement.

Why do I need to formally record what we have both agreed to?

Recording the agreement has the benefits of:

ensuring your former de facto partner, husband or wife does not have a future claim to your assets or superannuation entitlements (without overcoming significant legislative barriers);

being able to enforce any agreement (should this become necessary); and

certainty for all parties.

Unfortunately, a written agreement simply signed by you and your former partner is not enforceable.

[For any agreement to be enforceable, it must be recorded as either a Binding Financial Agreement](#) or be recorded in a Form 11 Application for Consent Orders and pronounced as Orders of the Court. It's worth noting that there are specific legislative requirements as to what constitutes a 'Binding Financial Agreement'.

What is an application for Consent Orders?

When a Form 11 Application for Consent Orders is made, the parties are asking the Family Court to make Orders in terms of the agreement they have reached. However, when considering such application, [the Court must be satisfied that the Orders sought are 'just and equitable'](#).

Simply because the parties have reached agreement, does not guarantee the Court will exercise its jurisdiction and make the Orders as per what has been informally agreed to between the parties. A Judicial Officer cannot necessarily make Orders that they consider are not 'just and equitable' in line with the principles of the *Family Law Act 1975*.

When either a Binding Financial Agreement is entered into, or Orders are made, this formally finalises your financial relationship with your former partner and also provides means to enforce such Agreement or Orders with Court. This provides security for both parties should a former spouse not follow through on their side of the agreement.

Obtaining Orders in the terms of the agreement you have reached also provides additional advantages; for example, if you are transferring a property from one party to another, Orders provide you with a stamp duty concession. Nominal stamp duty is payable on a transfer of property (or an interest in a property) from one party to a relationship or marriage, to another.

Need help formalising your agreement - speak with a family lawyer

If you have reached an informal agreement following the breakdown of your relationship, the team at Meillon & Bright can advise you whether what you have agreed to would be considered just and equitable by the court. We can also assist you with formalising your agreement either by way of the Form 11 Application for Consent Orders or [Binding Financial Agreement](#). Both these documents involve specific legal drafting and are best drafted by an experienced family law solicitor.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.