

Six things to know about Binding Financial Agreements

There are many names for Binding Financial Agreements or BFA's, including;

- Pre-nuptial Agreements (commonly known as pre-nups),
- Post-nuptial Agreements (post-nups); and
- Cohabitation Agreements.

They are known by the courts as Binding Financial Agreements. There have even been movies about them and their enforceability and plenty of sensational newspaper stories but this article sets out the six key points you need to know.

How do they work?

A BFA allows a couple to agree in advance on an acceptable division of assets. After a relationship between a couple breaks down or is no longer workable, a BFA can reduce the financial stress of a separation and allow the couple to amicably separate without the need for costly, time-consuming and stressful court action.

Therefore entering into a *properly drafted* and executed BFA can prevent the courts from interfering with the agreed property distribution and provide certainty at the time of the breakdown of any relationship.

When do the parties enter into a BFA?

BFA's can be entered into before the commencement of a marriage or relationship or at any point during the marriage or relationship and even after separation.

How binding are they on the Courts?

The short answer is that they are binding, provided they have been set up correctly. To be binding, there are certain requirements that BFA's need to meet, if these items are not met, then the agreement can be void or set aside. It is important that the parties obtain independent legal advice and have a solicitor draft and sign the document to avoid the agreement being set aside.

In addition, BFA's should also be reviewed about every two years or after a significant event in the lives of the parties, such as the birth of a child or one party receiving an inheritance.

What does a BFA usually cover?

A BFA can specify how the parties have agreed to divide the asset pool in the event the relationship fails. They deal with property, financial resources as well as maintenance, generally described as:

- The financial settlement (including superannuation entitlements);
- The financial support (maintenance) of one spouse by the other;
- The agreed arrangements for the children; and
- Any incidental issues

This means the following practical issues that commonly arise, are dealt with in the BFA:

- Protect existing assets or likely inheritances;
- Ensure that children of previous relationships inherit;
- Preserve family farms or other businesses for future generations;
- Provide more weight to the contribution of a higher income earner; or
- Avoid disputes about financial matters at the end of a relationship.

What a lawyer will need to know when advising about BFA's

When a lawyer is advising a party about a BFA and before an agreement can be drafted, many factors are taken into account, for example:

- The parties' occupations and future capacity to earn an income.
- Their superannuation entitlements.
- Their current assets including chattels, vehicles, shares, furniture, valuables.
- The current value of these assets.
- The current market value of property a party intends to own personally.
- Details of each party's liabilities including any loans, mortgages or debts.
- Whether there is any other family law financial agreement which may apply.
- The date when the cohabitation commenced between the parties.
- The date when the relationship commenced between the parties.
- Whether or not either party has been married previously.
- The number and age of any children.

What are the benefits?

A correctly executed BFA may provide some degree of certainty to the parties and avoid unnecessary arguments, if a relationship ends, as they have agreed in advance as to how the property will be divided.

It can also make parties feel secure knowing that the property they have accumulated before the relationship or marriage is safe. By reaching agreement in advance, the issues that occur after a break up are more likely to be carried out without costly legal expenses or court delays.

In summary

BFA's can provide significant comfort to parties before any relationship issues arise. They not only provide certainty if done properly but reduce stress and costs as well as provide a timely solution without having to experience any court delays as would occur if there was a prolonged argument between the parties.

Note though the importance of not only getting it done properly at the beginning but of having BFA's reviewed from time to time.

If you know someone who may need assistance get them to call us on (03) 9459 5764 or email admin@rtlegal.com.au.