

FORMALISING YOUR AGREEMENT

FACTSHEET

When former partners are able to reach agreement about how they should divide their property, there are two options to formalise – an Application for Consent Orders or a Binding Financial Agreement.

There are several reasons why it is so important to formalise a property settlement. These include:

- If your settlement involves a property transfer, **you will need either a court order or a Binding Financial Agreement to qualify for a stamp duty exemption.** On a \$500,000 home (principal residence), the stamp duty which would apply for a transfer from joint names to one spouse solely would be more than \$4,000. If it was an investment property, the stamp duty rises to more than \$7,000.
- If your settlement involves splitting of superannuation, the superannuation fund can only effect the split pursuant to a court order or a Binding Financial Agreement.
- If your settlement is not formalised, your former partner can apply to the court at a later date for a property settlement. Generally this entitlement to apply to the court ends 12 months after a divorce for married couples or 2 years after separation for de facto couples. However, there are exceptions which potentially allow a former partner to apply years after separation.

Which is best - Consent Order or a Binding Financial Agreement?

While either a Consent Order or a Binding Financial Agreement will serve the purpose of finalising a property settlement, the recommendation as to which best suits your needs depends on individual circumstances.

The key difference between an Application for Consent Orders and a Financial Agreement is that in order for a Financial Agreement to be binding, each party must receive independent legal advice from a solicitor. In the case of a Consent Order, because the proposed orders are scrutinised by the Court, the parties are not required to obtain independent legal advice. It can therefore be more cost effective to enter into a Consent Order. A Consent Order can also deal with Parenting matters, whereas a Financial Agreement cannot.

A Financial Agreement may be recommended in the case where the agreement reached between the parties is not considered “just and equitable”, as the Family Court can refuse to make orders which are outside of the range of entitlements for each party.

Financial Agreements can also be entered into prior to or during a relationship and this type of Agreement is commonly referred to as a “Pre-Nup”. While there has recently been media coverage of high profile cases where such Agreements have been overturned by the Courts, a well-drafted Agreement which complies with the legislation offers peace of mind for couples entering into new relationships.

Easy Separations offers fixed fee services for either Consent Orders or a Binding Financial Agreement. Contact us for advice about which option best suits your circumstances.



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