



FREQUENTLY ASKED QUESTIONS ABOUT

Formalising your property and financial settlement agreement

Reaching agreement on the split of your property is no easy task. The fact that you and your ex-partner have, should be applauded. By formalising your agreement you can make sure your split remains amicable and avoid it being contested in years to come.

Why is it important to document your agreement?

Documenting and formalising your agreement under the Family Law Act makes it legally binding and enforceable.

If you do not formalise it, you or your ex can challenge it at any time in the future. While you might think this is unlikely, it happens more often than you would think. As time goes on, people's circumstances change and sometimes what made sense at the time, doesn't anymore.

There are a number of advantages to documenting your agreement, which include:

1. Peace of mind – What you walk away with is yours, along with everything else you acquire from then on in.
2. Stamp duty savings – If your agreement involves the transfer of joint property to one of you, a documented agreement will mean that no transfer fee is payable.
3. Your former spouse can't change their mind or try to re-negotiate the settlement later on.
4. Your agreement is legally binding and enforceable and the financial relationship between the two of you is permanently severed – allowing you to truly move on with your life.

What could happen if you don't formalise the agreement?

If you do not document and formalise the agreement, your ex-partner can come knocking at anytime and make an application for a property settlement to be heard by courts. This can be problematic as the property pool is based on the value of assets at that time, rather than when you separated. This means your ex can:

- Lay claim to assets and money you have acquired after the separation – including inheritances and even lotto winnings.
- Argue for debts and liabilities they have acquired post separation to be included in the property pool.
- Potentially get a more favourable split, if their earning capacity, health or circumstances have changed.

It is also problematic because:

- In the event that one of you dies and you still own property as joint tenants, the property will be automatically transferred to your former-spouse, regardless of what is in your Will.
- If the agreement doesn't work out, the window of time to file property settlement proceedings may have closed, making it far more costly and time consuming to pursue. Divorced couples have 12 months from the date of divorce, while de facto have 2 years from the date of separation.

Your two options for documenting your agreement

Under the Family Law Act you can make your agreement legally binding and enforceable through either a Consent Order or a Binding Financial Agreement. The requirements of each are detailed in the table below.

	Consent Order	Binding Financial Agreement
What is it?	<p>A Consent Order details and documents your agreement and is submitted to the court to review and approve.</p> <p>Once approved by the court, it becomes a Court Order and is legally binding and enforceable.</p>	<p>A Binding Financial Agreement is an agreement that is prepared by a lawyer and details how property will be split.</p> <p>Once signed by both parties it becomes legally binding and enforceable.</p>
How long does it take?	<p>To prepare a Consent Order your lawyer completes a series of forms that set out the financial information and detail the specifics of your agreement.</p> <p>Once lodged, it typically takes four to six weeks for the court to review and approve.</p> <p>Please Note. If superannuation is to be split, the relevant super fund needs to provide approval (for both a Consent Order and Binding Financial Agreement) which can take up to four weeks.</p>	<p>The process of drafting a Binding Financial Agreement is relatively straight-forward. Once the required information is provided it can be drafted within days.</p>
Do we both need a lawyer?	<p>A single lawyer can be engaged to draft the Consent Order, on behalf of both parties.</p> <p>While not a requirement, both parties can obtain independent legal advice if they wish.</p>	<p>Both parties are required to obtain independent legal advice, in order for the Agreement to be legally binding and enforceable.</p>
What Information do we need to provide?	<ul style="list-style-type: none"> • Full name • Occupation • Address • Email address • Date and Country of birth • Aboriginal and/or of Torres Strait Islander origin • Date you started living together • Date, City and Country of marriage • Date of separation and divorce • Full name and date of birth of any children • Property and financial information required for you and your former spouse: <ul style="list-style-type: none"> - Gross weekly income - Child support paid – to whom and how much per week - List of all assets and liabilities detailing value of each and including full address of any property, bank account balances, cars (including make, model year) and who owns each asset/liability - Superannuation account balance/s and fund name/s - Details of financial and non-financial contributions to the relationship - Who will retain what 	<ul style="list-style-type: none"> • Full name • Occupation • Address • Date and Country of birth • Date you started living together • Date, City and Country of marriage • Date of separation and divorce • Full name and date of birth of any children • Property information required for you and your former spouse: <ul style="list-style-type: none"> - Gross annual income - List of all assets and liabilities detailing value of each and including full address of any property, bank account balances, cars (including make, model year) and who owns each asset/liability - Superannuation account balance/s and fund name/s - Who will retain what
Next steps	<p>The team at Lakey Family Law has lots of experience formalising and documenting separation agreements. To discuss your options or proceed with a drafting a Consent Order or Binding Financial Agreement call or email us.</p>	

