

InfoSheet:

Binding financial agreements

Our service commitment

We take a personal interest in you and want to help take the stress out of one of life's most challenging times. We are here to help you, give you guidance and professional advice. We will take the time to listen to you.

Our commitment to you is that we will:

- outline how long we expect it to take
- regularly update you on how your matter is progressing
- give you a clear indication of the costs before starting work for you
- provide flexible payment options
- give you access to our accredited specialist in family law as required

The first steps

For a discounted fee of \$250 you can consult with one of our specialist lawyers who will provide you with advice in relation to your specific issues and point you in the right direction for the best outcome for you and your family

alternatively

You can consult with one of our specialist lawyers at our Free Family Law Clinic held monthly at our Dapto or Shellharbour offices. This appointment is restricted to 30 minutes and provides a summary of the family law process.

“Pre nups” in Australia

Many people have heard of “pre nups” or “pre nuptial agreements” through American television shows or movies.

Such agreements can also be entered into under Australian law and in particular the Family Law Act 1975. These agreements are referred to as “Binding Financial Agreements.”

Binding Financial Agreements allow parties to outline how their property is to be divided in the event that the parties separate.

Binding Financial Agreements can prevent costly legal action and future disputes as well as protect the assets that you have at the start of a relationship.

By signing a Binding Financial Agreement the parties forgo any rights they may have to make a claim against their spouse under the Family Law Act. Instead, the Binding Financial Agreement outlines how the parties' property is to be divided if the parties separate.

When you can enter into a Binding Financial Agreement

Binding Financial Agreements are not just for people considering marriage.

Binding Financial Agreements can be entered into at almost any time including, before, during or after marriage and separation.

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Equal rights for de facto couples

Binding Financial Agreements are also not just for married couples.

People considering, or in a de facto relationship, can also enter into a Binding Financial Agreement.

A Binding Financial Agreement can be entered into at almost any time including before the start of a de facto relationship, during the relationship or even after the relationship has broken down.

When is a Binding Financial Agreement valid?

For a Binding Financial Agreement to be valid a number of technical and legal requirements must be satisfied.

If the agreement is not drafted carefully and accurately it may not be enforceable and may later be challenged or even set aside by the court. It is important that the Binding Financial Agreement is drafted by an experienced family law solicitor to ensure it complies with all legislative requirements and is properly enforceable.

Independent legal advice

Each party must receive their own independent legal advice regarding the Binding Financial Agreement for it to be binding and enforceable.

For this reason we can only discuss the agreement with you, even if you and your spouse are still together and have amicably decided to enter into the agreement.

A financial agreement is binding on the parties to the agreement if, and only if, each party to the agreement has received independent legal advice from a legal practitioner regarding:

- the effect of the agreement on the rights of that party; and

- the advantages and disadvantages at the time that the advice was provided to the party of making the agreement.

Why enter a Binding Financial Agreement?

By entering a Binding Financial Agreement you are provided with certainty as to the division of your property should you separate from your partner. It also allows you to protect the assets that you have entered the relationship with.

By entering a Binding Financial Agreement the parties are not bound by the Family Law Act, provided the agreement is not set aside. This means you could potentially avoid lengthy and expensive negotiations and proceedings to resolve a property settlement division should you separate.

The Binding Financial Agreement also allows you to make provisions that suit you and your spouse specifically.

Family Law

Family Law is a very complex area of law with each case being as unique as each relationship.

At Kells the Lawyers we provide you with tailored legal advice to specifically suit your needs and circumstances.

At Kells the Lawyers we have an expert family law team which includes a Law Society accredited specialist in family law.

Our fees promise

We provide you with an outline of the likely costs of your matter at the start of your case and will regularly update you. We are committed to keeping your costs down.

Contact the Kells Family Law Team

Wollongong
4221 9311

Shellharbour
4295 8400

Dapto
4260 3900

Sydney
9233 7411

Kells

yourlawyers@kells.com.au

www.kells.com.au