



BRIESE LAWYERS FACTSHEET

Formalising Negotiated Agreements & Settlements



The risks associated with not formalising negotiated or mediated agreements and settlements are considerable and the consequences of not doing so may have a significant emotional and financial cost.

It is extremely important once an agreement is reached, that the terms of the agreement are recorded in writing in the proper way to ensure they are legally binding on the parties. This can be by either Consent Orders or a Binding Financial Agreement.

Consent Orders

Consent Orders can deal with all issues in dispute in the Family Court including property, spousal maintenance and parenting matters. They are written Orders, containing the express terms upon which you and your partner have agreed, signed by you and your partner and then lodged with the Court. After the Consent Orders are lodged, they are considered by the Court without the need for appearances and are usually approved, stamped and issued within 3 to 4 weeks of filing.

Binding Financial Agreement

Binding Financial Agreements are similar to Consent Orders, except that they do not require the approval of the Court. It is a detailed agreement which records specifically the terms which you and your partner have agreed upon. This document requires both you and your partner to make full disclosure of your financial circumstances and requires both you and your partner to obtain independent legal advice and to have a solicitor provide a certificate stating that they have advised you of certain matters.

Parenting Plans

You can also record your agreement in relation to children by way of a Parenting Plan which is a written plan detailing your agreement for the ongoing care and other arrangements for the children and can also be registered with the Court. To read more on Parenting Plans, refer to our factsheet entitled "Parenting Plans".

The Risks of Not Formalising Your Agreement

Unless you have a property settlement Order made by the Court, a Consent Order approved by the Court, or a Binding Financial Agreement, then your partner may legally make a further claim on your property up to and until 12 months after the date of divorce, despite an earlier division of assets.

For example:

- You and your partner have separated amicably and you have both divided the property between you and have moved on in your separate lives;
- You never bothered about a Divorce, as you simply haven't got around to it and really, have no intention to remarry;
- Several years down the track your partner's circumstances change and they see how your financial circumstances have improved - you own valuable property now, or you have made money through prudent investments, or your business has prospered;
- Your partner is legally entitled to file proceedings in the Court to obtain a share of your property;
- The Court must examine and assess the property of both you and your partner *at the time of the Hearing*, not as it was when you separated.

There have been a number of recent cases decided in the Family Court that have dealt with the difficulties that parties encounter when they do not formalise their settlement. It is therefore extremely important to have your agreement properly formalised to prevent this occurring.



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