



# How to make your family law financial agreement legally binding

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A family law financial agreement, often called a [Binding Financial Agreement](#) or BFA, is only enforceable if it strictly complies with Australian law. This article explains how to make a family law financial agreement legally binding, including when it can be used, the legal requirements, common mistakes, and when agreements can be set aside by a court.

## What is a family law financial agreement?

A family law financial agreement is a private contract between parties to a marriage or de facto relationship. It sets out how property, debts, financial resources and spousal maintenance will be dealt with if in the event of separation

Financial agreements can be made:

before a marriage or de facto relationship begins;

during a marriage or de facto relationship; or

after separation or divorce.

## When are financial agreements commonly used?

Financial agreements are often used in situations such as:

one party entering the relationship with significantly more assets;

second marriages or later-in-life relationships;

specific assets to be quarantined, such as family businesses or [farms](#);

protecting inheritances; or

parties seeking certainty as to their financial circumstances and privacy rather than court involvement in the event of separation.

Financial agreements are not suitable or necessary for every relationship, and careful legal advice is essential.

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## Essential requirements for a legally binding agreement

Financial agreements are governed by the *Family Law Act 1975* (Cth) or the *Family Court Act 1997* (WA) – for de facto parties in WA. Both Acts set out specific requirements that must be met before an agreement will be legally binding.

Courts enforce these requirements strictly. Even small technical errors can make an agreement unenforceable.

To be legally binding, a family law financial agreement must meet the following requirements.

### The agreement must be in writing

The agreement must be a written document. Verbal agreements and informal arrangements are not legally binding under family law.

### Each party must receive independent legal advice

This is one of the most important requirements.

Before signing, **each party must receive independent legal advice about:**

the effect of the agreement on their rights; and

the advantages and disadvantages of entering into the agreement.

## Lawyers must provide signed certificates

Each lawyer must sign a statement confirming that legal advice was provided. These certificates must be exchanged between the parties and annexed to the Agreement.

Missing, defective, or unexchanged certificates may render the agreement unenforceable.

## The agreement must specify the relevant section of the Act

The agreement must clearly state which section of the Act it is made under, depending on whether it is:

before marriage;

during marriage;

after divorce; or

for de facto relationships.

Using the wrong section, or failing to specify it, is a common drafting error.

## Avoiding undue influence and unfairness

An agreement must be entered into freely and voluntarily for it to be enforceable.

Courts may set aside an agreement where there is:

duress, such as pressure to sign shortly before a wedding;

undue influence, including emotional manipulation;

unconscionable conduct, where one party takes advantage of the other's vulnerability.

# Ensuring the agreement is drafted correctly

A legally binding financial agreement must be carefully drafted. Poor drafting is a primary reason an agreement may fail.

Common drafting issues include:

vague or uncertain wording;

assets not clearly identified;

failure to deal with future property or liabilities.

# When can a court set aside a financial agreement?

Courts may set aside a financial agreement if:

it was obtained by fraud, including non-disclosure;

it is void, voidable, or unenforceable under contract law;

circumstances have arisen making it impracticable to carry out;

it would cause hardship due to changes relating to children; or

a party engaged in unconscionable conduct.

Financial agreements are not immune from challenge. Careful preparation reduces risk but cannot remove it entirely.

# Practical tips for making your financial agreement binding

To maximise enforceability of your financial agreement:

allow plenty of time for negotiation and advice;

ensure both parties are open and transparent;

use experienced family law lawyers;

avoid last-minute pressure;

document the advice process carefully; and

review the agreement periodically.

## Frequently asked questions

**Is a financial agreement the same as a court order?**

No. Financial agreements are private contracts. Courts make or approve court orders. Both can finalise property matters, but they operate differently.

**Can we write our own agreement without lawyers?**

No. Without independent legal advice and lawyer certificates, the agreement will not be legally binding.

**Are financial agreements only for wealthy people?**

No. They are commonly used by people with modest assets who want certainty and to avoid future legal costs.

**Can a financial agreement be changed later?**

Yes. Parties can terminate or replace an agreement with a new one, provided the legal requirements are met.

**Do financial agreements cover superannuation?**

Yes, but superannuation must be dealt with carefully and clearly to avoid drafting errors.

## Get help from a family lawyer

A family law financial agreement provides certainty, protects assets, and reduces conflict when prepared correctly.

Strict legal requirements apply, and mistakes can be costly. Obtaining independent legal advice early and ensuring careful drafting are the key steps to making a financial agreement legally binding in Australia.

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