



Can a Binding Financial Agreement be overturned?

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A [Binding Financial Agreement](#) (BFA) is a legal contract which sets out how a couple's assets, liabilities, superannuation entitlements and financial resources will be divided if they separate or divorce. While a BFA is generally binding, there are some circumstances where it can be challenged or overturned by a court.

In this article, we'll explore how BFAs work, the grounds on which they can be overturned, and what you can do if you believe your agreement is unfair or invalid.

What is a Binding Financial Agreement?

A Binding Financial Agreement (BFA) is sometimes referred to as a "prenup" or "post-nup". Under the Family Law Act 1975 (Cth) or the Family Court Act 1997 (WA) (for de facto parties in Western Australia), couples can enter into a BFA:

before a relationship begins;

during a relationship;

after separation or divorce.

The main purpose of a BFA is to avoid future disputes by clearly outlining how property, superannuation, debts and spousal maintenance will be handled if separation occurs.

Are Binding Financial Agreements legally enforceable?

Yes, but only if certain legal requirements are met. For a BFA to be valid and enforceable:

both parties must have signed the agreement voluntarily;

each party must have received independent legal advice before signing;

the legal advice must cover the effect of the agreement on their rights and whether it was to their advantage or disadvantage at the time of signing the BFA;

a certificate confirming this legal advice must be attached to the agreement;

the agreement must not have been obtained through fraud, duress or undue influence.

If any of these steps are missing or mishandled, the BFA may be open to a challenge.

Grounds for overturning a Binding Financial Agreement

The Family Court of Western Australia or the Federal Circuit and Family Court of Australia may set aside a BFA in the following situations.

Fraud or non-disclosure

If one party deliberately hides or misrepresents assets, income or debts at the time of the agreement, the court may set the BFA aside. Full and honest [disclosure is required](#).

Duress, coercion or undue influence

If a party was pressured or intimidated into signing a BFA, even subtly, the agreement may not be valid. This includes emotional or financial pressure, or lack of time to properly consider the agreement.

Unconscionable conduct

Where one party has taken advantage of the other's vulnerability (such as illness, emotional dependence or lack of education), a court may find the agreement to be unfair and unenforceable.

Invalid legal advice

Each party must receive independent legal advice before signing a BFA. A financial agreement may not be regarded as binding if legal advice was not given or was inadequate, or if a Certificate of Independent Legal Advice is not attached to the agreement.

Significant changes in circumstances

The court may overturn a BFA if circumstances have changed significantly, especially where children are involved, and enforcing the agreement would cause hardship.

Common examples where BFAs are overturned

One party was pregnant and financially dependent, and the other party threatened to cancel the wedding unless the financial agreement was signed.

A party did not speak English well and was not provided with an interpreter or proper legal explanation.

One party had a solicitor who failed to explain the agreement's consequences in sufficient detail.

Major changes in child care arrangements occurred after the agreement was signed, making its terms unfair or unworkable.

What happens if a BFA is overturned?

If the court sets aside a Binding Financial Agreement, it may:

allow the parties to apply for property or spousal maintenance orders under the Family Law Act 1975 (Cth) or the Family Court Act 1997 (WA);

divide assets and debts according to standard family law principles;

consider contributions to the relationship (financial and non-financial), future needs, and parenting responsibilities in its decision.

Can I challenge my Binding Financial Agreement?

Yes, but only if you have strong legal grounds. It's not enough to simply regret signing the agreement or think you could do better financially without it. If you believe your BFA may be invalid or unfair, it's important to speak to a family lawyer.

A lawyer can help you assess:

whether the agreement meets legal requirements;

if there are valid grounds to challenge it;

what your realistic chances of success may be.

[GET ADVICE FROM AN EXPERIENCED FAMILY LAWYER: 08 6245 0855](https://www.familylawyer.co.uk/08-6245-0855)

Tips to help ensure a BFA is enforceable

To minimise the risk of your BFA being overturned:

always obtain independent legal advice from an experienced family lawyer;

make full and honest disclosure of all financial matters;

avoid coercing or pressuring the other party into signing an agreement;

allow plenty of time for both parties to consider the agreement before signing;

keep clear records of all correspondence and advice received.

Get help from a family lawyer

While Binding Financial Agreements are a valuable legal tool, it's important to understand that, under certain circumstances, they may not be enforceable. Courts take a strict approach to ensure fairness and proper legal process.

If you are entering into or disputing a BFA, you should seek legal advice and assistance from an experienced family lawyer.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.