

Can I Sign a Financial Agreement Shortly Before Getting Married?

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Financial Agreements signed on the "way to the church" run the risk of the financially weaker spouse arguing at a later date they were pressured into signing the financial agreement, or else the wedding would not proceed. The agreement would then be subsequently declared invalid.

Financial agreements require time to prepare, negotiate and finalise.

This includes ensuring strict compliance with the legislative requirements of either the *Family Law Act* 1975 (Cth) or the *Family Court Act* 1997 (WA) (for de facto partners in Western Australia) to ensure a financial agreement is binding and enforceable.

Financial Agreements – What are they?

As we explored in our blog "What is a financial agreement?", these agreements, commonly referred to as "prenups" or "BFAs", are an effective way to:

protect assets acquired before the commencement of a relationship; and/or

divide assets at the conclusion of a relationship: and/or

deal with the financial maintenance of a party to a relationship at its conclusion.

For a financial agreement to be binding, both parties must receive independent legal advice before entering into the agreement. This advice must cover the effects of the proposed agreement on their rights and entitlements and the advantages and

disadvantages of entering into the agreement at the time of making the agreement.

Each party must also receive a certificate of independent legal advice before signing the agreement (and a copy of the other party's certificate of legal advice) confirming both parties received independent legal advice prior to signing the agreement.

The Risk of Rushing a Financial Agreement

Parties to a proposed financial agreement are often eager to enter into the agreement with a planned wedding on the horizon to "get their financial house in order."

The Family Courts of Australia, including the High Court of Australia, have held in a number of prominent cases that financial agreements entered into in circumstances where a party was directly or indirectly pressured into entering the agreement with an impending wedding, were not enforceable or binding.

The pressure applied to the party to enter into the agreement prior to a wedding (days or weeks before signing) constituted unconscionable conduct and undue influence and was grounds for the Court to set the agreement aside, declaring it invalid.

The USA 'Dr Dre' case is a timely warning

The recent, and very public high-profile separation of US music producer Dr Dre and his wife of more than 20 years, Nicole Young, is currently exploring this very issue.

It has been widely reported that Ms Young has sought to have their "prenup" declared invalid on the grounds she was pressured into signing the prenup very shortly before they were married. Ms Young has also been reported to have claimed she was pressured and intimidated into signing the prenup or else the wedding would not proceed.

It is estimated the net wealth of the parties is in excess of US$800m. Watch this space.

How to avoid this risk of your financial agreement failing?

To mitigate the risk of having your financial agreement declared invalid on the grounds of undue influence or unconscionable conduct, it is advisable parties allow sufficient time to discuss and negotiate the terms of their agreement.

It is also advisable the lawyer you engage and the lawyer engaged by your partner provide you with the required independent legal advice with sufficient time for you both to consider the contents and implications of your agreement.

While there is no fixed period of time that should be considered for this, we recommend parties allow weeks if not months for a financial agreement to be prepared and finalised.

If you are the wealthier party to the relationship, it is important your communications with your spouse with respect to a proposed financial agreement are delicately conducted to avoid any suggestion of pressuring them into signing a financial agreement.

Get help from a family lawyer

We strongly advise if you are considering a financial agreement, you seek advice from an experienced family lawyer, weeks, preferably months before a significant milestone such as a wedding or proposing the financial agreement to your spouse.

At Meillon & Bright Legal, our team of experienced family lawyers have experience preparing and reviewing financial agreements before marriage has commenced, during a marriage or after parties separated.

We have close working relationships with a number of experienced professionals, including commercial lawyers, accountants and financial advisors, to consider all aspects of a proposed financial agreement and can work with you to suit your personal and financial circumstances.

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.