

Are verbal agreements binding in family law matters?

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At the time of separation, parties can often “reach agreement” on a number of family law issues. For example, one party may say, “we will go equal on everything” in relation to their property settlement. The other party agrees, but then… time passes. That party gets legal advice, talks to friends, reconsiders their position and decides that they are not happy with the arrangement that was initially agreed to verbally. The question is then: Is that original verbal agreement binding, or should it be formalised?

How do verbal agreements stand up in family law matters?

Unfortunately, a verbal agreement like the example above is unlikely to stand up in family law.

This is for a number of reasons:

> When parties separate, often there is high emotion and a power imbalance. With the surge of emotion, a party may not be in the best place to consider decisions being made at that time or to seek legal advice and understand what they are agreeing to.
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> It would not be fair or reasonable to enforce an agreement reached in the heat of this moment.
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> Parties are entitled to seek legal advice prior to entering into agreements. What they could consider as “fair” and what a lawyer (or a Court) considers as “fair” can be vastly different.
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> Parties should be afforded the opportunity to have this advice before entering into a final agreement.

A verbal agreement is not “filed” with the Court, and therefore, orders cannot be made.

It is important for financial/property matters that any agreement reached is recorded in writing and then filed with the Court. The Court will determine if the agreement is fair and equitable and, if so, will issue Court orders. If parties do not seek Court orders (which are binding), there is always the opportunity the other party will come back and seek further monies at a later time.

Consider this scenario

One party leaves the relationship and says, *“you can have the house, I will keep the business”*.

They then carry on life under this understanding.

The business makes millions of dollars and increases ten times in value following this verbal agreement.

The other party (who kept the house under the verbal agreement) commences proceedings in the Court for a final property settlement.

Without orders or a Financial Agreement in place, the party who owns the business is now exposed to paying out the other party the increase in value in the business.

Your verbal agreement should be formalised

When separation is relatively amicable, and a verbal agreement has been reached, parties can be hesitant to have lawyers involved. They may think this will cause a fracture in the otherwise amicable dynamic and/or be an unnecessary costly exercise

The involvement of lawyers does not always need to be this way.

As the person instructing the lawyer, you could either:

provide strict instructions to your lawyer to assist you in maintaining an amicable relationship;

instruct your lawyer to draft the documents but you will provide them to the other party;

seek recommendations (either from your lawyer or others) of like-minded lawyers who can work collaboratively to protect the amicable relationship.

Have a discussion with a family lawyer

Have a first appointment with a family lawyer to see if they will be the right fit for you and that they understand that an amicable relationship with your former partner is paramount. Seeking professional guidance as to the process that is best for you and your family situation is crucial to a successful result.

Speak to the lawyer about the verbal agreement reached between you and your former partner and whether the lawyer considers that agreement falls within the broad discretion of what a Court would order (and thereby make orders).

Our team at Meillon & Bright often work with parties and colleagues to draft agreements reached between the two individuals. It is always a pleasure to assist those who, whilst separated, can communicate amicably. For these families, we are committed to ensuring we practice law in a way which promotes this relationship continuing positively beyond the separation.

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.