



# Family Law Fact Sheet

## After separation

### Consent Orders versus Financial Agreements

#### Consent Orders

##### ***What is a Consent Order?***

A Consent Order is an Order made by the Family Court of Australia which documents an agreed division of matrimonial assets for a marriage or de facto relationship.

##### ***Is a Consent Order enforceable?***

Yes, a Consent Order is binding and enforceable. If the terms of an Order are breached, an Application can be made to the Court to enforce the terms of the Order.

##### ***What matters can and can't a Consent Order deal with?***

Consent Orders can deal with the following matters:

1. Parenting matters;
2. Property Settlement;
3. Spousal maintenance and maintenance for de facto parties;
4. Splitting superannuation.

Consent Orders generally cannot deal with child support.

##### ***Why do I need a Consent Order?***

- **Finality**

A Consent Order will finalise your matter in respect of property settlement with your former spouse/partner and ensure that your ex does not come back in the future for another settlement.

- **Duty exemption**

Where a house is being transferred from the joint names of the parties to the sole name of a party you will usually receive a stamp duty exemption on that transfer when you have a Consent Order.

- **Parenting**

A Consent Order can also formalise parenting agreements for children of the relationship.

#### Financial Agreements

##### ***What is a Financial Agreement?***

A Financial Agreement is an Agreement signed by all parties to a marriage or de facto relationship which details the agreed division of assets in relation to a marriage or de facto relationship. Unlike Consent Orders, Financial Agreements are not filed with the Family Court.

##### ***Is a Financial Agreement enforceable?***

Yes, provided the Financial Agreement is drafted strictly in accordance with the legislation, a Financial Agreement is binding and enforceable under principles of contract law.

##### ***What matters can and can't a Financial Agreement deal with?***

1. Property Settlement;
2. Spousal maintenance and maintenance for de facto parties;
3. Splitting superannuation.

Financial Agreements cannot deal with parenting matters such as who a child lives with, spends time with and communicates with. Financial Agreements also cannot deal with child support.

##### ***Why do I need a Financial Agreement?***

- **Finality**

A Financial Agreement will formalise your property settlement and spousal maintenance issues so that your ex cannot come back in the future to seek a further settlement and more money.

- **Duty exemption**

Where a house is being transferred from the joint names of the parties to the sole name of a party you will receive a stamp duty exemption on that transfer when you have a Financial Agreement.

- **Spousal maintenance**

A Financial Agreement is the most effective way to extinguish spousal maintenance rights.

## Consent Orders

### ***Who prepares the terms of a Consent Order?***

The terms of a Consent Order are prepared by either party's lawyers.

### ***Do I need to obtain legal advice?***

You do not have to obtain legal advice in order for a Consent Order to be filed or made by the Family Court of Australia. However, we strongly recommend that you obtain legal advice. The Courts will only make a Consent Order if it is fair, just and equitable. The absence of legal advice is sometimes a reason why the Court does not grant Consent Orders.

### ***When can Consent Orders be set aside?***

Consent Orders can be set aside where a court is satisfied there is a valid reason to set the Orders aside. These reasons include impracticality, hardship for the child of the relationship or default in carrying out the terms of the Order.

### ***What will it cost me to get a Consent Order?***

The cost of your consent order will depend on the terms you are seeking and how complex they are. It is usually (though not always) less expensive to prepare Consent Orders than Financial Agreements.

We will advise you as to whether Consent Orders, a Financial Agreement or both is needed in your matter.

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## Financial Agreements

### ***Who prepares a Financial Agreement?***

Financial Agreements are almost always prepared by lawyers due to their complex nature and the requirement that they strictly comply with the requirements of the *Family Law Act 1975* (Cth).

### ***Do I need to obtain legal advice?***

Each party to the Financial Agreement must obtain legal advice for the Agreement to be binding and enforceable on all parties. This is because the Financial Agreement is not filed in the Courts and there is no judicial officer to determine whether the terms of the Agreement are fair, just and equitable.

### ***When can a Financial Agreement be set aside?***

Financial Agreements can be set aside by a Court if the Court finds there is reason to set aside the Financial Agreement. These include when the Agreement is obtained by fraud (including non-disclosure of a material matter), where there has not been strict compliance with the legislation in drafting and signing the Financial Agreement where a party to the Agreement engaged in conduct that was unconscionable or where circumstances have arisen since the Agreement which make it impracticable for the Agreement to be carried out.

### ***What will it cost me to get a Financial Agreement?***

The cost of your Financial Agreement will depend on the terms you are seeking and how complex they are. It is usually (though not always) more expensive to prepare a Financial Agreement.

We will advise you as to whether Consent Orders, a Financial Agreement or both is needed in your matter.

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