

Family Law Fact Sheet

Do I need a “pre-nup” on the gift registry for our wedding?

Many of us don't think twice about taking out insurance policies for income protection, death, or temporary and permanent disability. We do so because the financial consequences, should the unthinkable happen, are severe and we would want to insure against those consequences.

However, many people do not regard a Financial Agreement either prior to or during a marriage or de facto relationship in the same way. The cost of litigation in the event of a breakdown of a de facto relationship or marriage can be severe. There is also a significant emotional cost, particularly if parties cannot come to an agreement quickly following a separation concerning the legal severance of their financial relationship. Litigation to resolve financial place can take months or years to finalise.

Often at the time of separation emotions are high and people do not make decisions which are in their long term best interests. Decisions can sometimes be made out of the sense of revenge, rather than taking a commercially sensible approach to finalising matters as quickly as possible and minimising legal fees.

Parties can look at a Pre-Nuptial Agreement (called a Financial Agreement under the *Family Law Act*) in the same way they look at insurance – an attempt to insure against drastic financial consequences in the event that an unexpected and undesirable event happens.

Types of Financial Agreements

Financial Agreements can take many different approaches, depending on what is most appropriate for spouses. For example, a Financial Agreement can provide that each party retain their pre-existing assets in the event of a separation and that any jointly acquired assets are divided equally.

A Financial Agreement can also provide for some assets (for example an inheritance or potential inheritance from one party's parents) to be retained by that party solely and can leave open the resolution of other financial matters in the event of separation.

Financial Agreements can also deal with the obligations of both parties to make payments of spousal maintenance to each other in the event of a separation.

Where there are children of the relationship, or it is contemplated that there will be children of a relationship, arrangement can be made in a Financial Agreement to ensure the stay at home parent receives the family home as part of their entitlement to ensure the children receive stability.

Financial Agreements after cohabitation

Financial Agreements can also be entered into after parties have moved in together or after they have married. This allows Financial Agreements to be altered in the event financial circumstances change or where parties want to consider their preferred division of property in the event of a separation after having arranged their wedding or moved house.

The breakdown of a relationship is like all other undesirable events in life – one that should be insured against, particularly where both parties have significant assets at the time they move in together, or there is significant difference between the assets and resources of each party.

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