



ADLV LAW

FIERCELY ON YOUR SIDE

SOLUTION BRIEF

Binding Financial Agreements: What to expect



Contents

- 01** Step 1: Instructions
- 02** Step 2: Discussing the agreement with your partner
- 03** Step 3: Disclosure
- 04** Step 4: Draft Document
- 05** Step 5: Review, negotiation and finalisation
- 06** Step 6: Signing

01

Step 1: Instructions

The first step is for you to find a lawyer to brief on the background of the matter and what you want to achieve from the Binding Financial Agreement ('BFA'). Your lawyer will need to have a clear idea on your personal and financial circumstances, as well as those of your partner.

It may be the case that a BFA simply isn't right for you because of the nature of your relationship or finances/property ownership, or because it will not achieve your desired objectives. BFAs do have their limitations, which is why the background detail is important for your lawyer. If your lawyer thinks it appropriate to proceed with a BFA, then the next step we recommend is for you to discuss the proposed agreement with your partner.

02

Step 2: Discussing the agreement with your partner

An agreement requires parties to agree – it is a two-way document. This means that it is important that your partner is on board with the BFA in principle, even if you cannot quite agree on the finer details.

Much of the value of a BFA comes from those early discussions between you and your partner about your expectations and goals and what you think is fair and reasonable. Having these conversations can help you work through any differences of opinion early on, to avoid costly arguments in the future.

03

Step 3: Disclosure

One of the essential parts of the BFA process that enables the document to be legally binding under the Family Law Act is the fact that it requires parties to make full financial disclosure.

Financial disclosure is important because if your partner does not know what you own and what you owe, they cannot make an informed decision about how to divide up your assets and liabilities in the event you separate. An agreement – especially a legally binding one – is all about informed consent.

Disclosure will require you to provide your lawyer with detailed information about your financial position. Most lawyers request that you provide copies of documents to verify the information (such as bank statements, credit card bills etc). If possible, you will also provide your lawyer with information about your partner's financial position at this stage or they will need to provide similar documents to you.

Your financial information is then summarised in a table and will include detail of the asset or liability, their values, together with details of ownership. This creates a type of 'balance sheet' of your individual and joint financial positions, so that you can both have a clear idea of what is at stake.

04

Step 4: Draft Document

When they have received all your personal and financial information from you, your lawyer will put together a draft BFA for your review.

The agreement should cover off all the core issues, such as:

- How your solely owned and jointly owned property will be divided if you separate;
- How your sole and joint liabilities will be dealt with if you separate; and
- How any financial resources (trusts and other indirectly-owned assets) and inheritances will be treated if you separate.

Your lawyer should explain to you the advantages and disadvantages of the agreement for you, and discuss any options for improving your position under the agreement.

The document will be quite detailed. You should read through the agreement carefully, and let your lawyer know if you don't understand what something says or how a clause is supposed to work in practical terms. Once you are comfortable with the draft document your partner's lawyer will then need to review it.

05

Step 5: Review, negotiation and finalisation

Your partner's lawyer must verify the financial disclosure and review the terms of the agreement, and then advise your partner on the advantages and disadvantages for them in entering into the agreement. As part of this process, it is common for your partner's lawyer to want some amendments to be made to the agreement. The amendments will either aim to improve the "deal" for your partner, or will seek to clarify or correct something in the agreement. It is best to discuss any changes with your lawyer and seek their advice about whether they are comfortable with the proposed changes.

Once both parties and their lawyers are happy with the BFA, the document can be finalised ready for signing. It is important that your lawyer ensures that the document complies with all the requirements in the Family Law Act, including containing lawyer's certificates and statements of the parties about independent legal advice.

06

Step 6: Signing

The ordinary way of signing is to have one party sign first, then the originals are sent to the other party for signing. This means that the signing process may take up to a week.

We recommend that the parties sign the BFA separately from each other, preferably in the presence of their own lawyer. If their lawyer is not available to act as their witness, they should preferably use another professional witness (e.g. a justice of the peace or another professional person). This helps to safeguard the process if there is ever any doubt about the witnessing of the document.

Each party's lawyer will have to sign their lawyer's certificate stating that they have provided separate and independent legal advice to their client. Similarly, each party must sign a statement that says that they have received advice about the agreement.



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What next?

The whole process of a BFA from start to finish can take up to 8 weeks, depending on how complex your financial affairs are and whether you require any special terms to be drafted into the document. It is best not to rush the process to ensure that each party has plenty of time to review the document and obtain comprehensive advice before signing.

If you would like to speak to someone about putting a BFA in place, call us on 1300 654 590 or email us at wehelp@adlvlaw.com.au.

Further information can also be found on our website at www.adlvlaw.com.au.