



MARITAL AND DE FACTO FINANCIAL AGREEMENTS

People entering into a relationship sometimes look to put in place agreements to set out financial arrangements both during the relationship and in the event of separation.

“Financial Agreements” can be entered into:

- By parties prior to, during or on separation of a de facto relationship (Part 19 of the Property Law Act 1974 (Qld));
- By parties prior to, during or on separation or divorce of a marriage (Part VIIIA of the Family Law Act) 1975 (Cth)).

Most people are familiar with the term “pre nuptial agreement” which is a financial agreement entered into by parties intending to marry. Similar agreements can also be entered into by those intending to enter into a de facto relationship and also during the marriage or de facto relationship or on separation or divorce.

The agreements can operate to exclude the jurisdiction of the Court to deal with financial matters at a later date (unless the agreement is set aside because certain factors, for example, fraud, duress, non-disclosure or unenforceability, were present).

WHY SHOULD YOU ENTER INTO SUCH AN AGREEMENT?

Some of the possible advantages and reasons for couples entering into a financial agreement prior to the de facto relationship or marriage include:

- certainty, and peace of mind in relation to financial matters in the event of relationship breakdown;
- protection of ownership of assets brought into the relationship;
- protection of ownership of special assets acquired during the relationship (for example, an inheritance);
- minimising interruption to business operations;
- prevention of costly, lengthy litigation if the relationship does end;
- directing the executors and personal representatives in the event of death.

The agreements can be of particular benefit to people who are entering subsequent marriages, as well as people on the land and those who own family businesses.

REFERENCES

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