

FREQUENTLY ASKED QUESTIONS

Can I protect my assets before I marry or start living in a de facto relationship?

The question of protecting one's assets before entering into a committed relationship is one that is often asked, but usually after the event by which time it is too late.

In December 2000 amendments were made to the Family Law Act which permitted couples contemplating marriage to enter into a Binding Financial Agreement ("BFAs") before a marriage to determine how their property would be divided in the event of their marriage subsequently breaking down.

Provided that the BFA has been entered into properly, which includes each party disclosing the assets in which they have an interest, and obtaining independent legal advice, only in very rare cases will the Court set aside such an Agreement.

What issues can be covered in a BFA?

BFAs can be prepared to include either all, or only certain specific assets and resources in which the parties may have an interest. They can also be entered into during the marriage, or after separation. The Agreement can deal with:

- The division or protection of any real property (such as real estate, cash, shares or businesses) or personal property (such as furniture);
- An apportionment of superannuation;
- Whether provision is to be made in the Agreement for the maintenance of either spouse.

What if you plan to live together but not marry?

It is now also possible in Victoria to enter into what are known as Relationship Agreements to protect assets or resources that you may own before commencing to live with another person in a de facto relationship. Since December 2008, Relationship Agreements have been available for couples living together, but who do not plan to marry. These Agreements apply to those living in heterosexual or same sex relationships in Victoria.

BFAs need to be drafted to suit your particular circumstances, as there is no "one size fits all". They are, however, worth serious consideration if you are planning to cement your relationship by either commencing to live together, or if you are considering marriage, particularly if you have acquired assets that you would like to protect before making that commitment. For example, they are a useful means of protecting assets you may co-own with close family or friends, or to protect the inheritance of children you may have from a prior relationship.

For further information regarding entering into Agreements to protect your assets or advice on any other family law issues, please contact our Family Law Partners:

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