

Financial Agreements A means of protecting business interests

Financial Agreements are instruments that can keep your business affairs out of the Family Court. By knowing more about them could keep you more in control of your business affairs.



The Family Court has no Power over a valid Financial Agreement



KEY FACTS

- ◆ Legislation amended the Family Law Act to introduce Financial Agreements
- ◆ Financial Agreements were intended to allow a couple to decide the way they wish to divide their assets and liabilities on separation, prior to that event occurring and without the involvement of the Court
- ◆ The manner in which couples decide to divide their assets and liabilities was a matter for them and was not controlled or supervised by the Family Court.
- ◆ The Family Court has no power over assets including a valid Financial Agreement.
- ◆ But the amendments go further by allowing third parties to be part of Financial Agreements
- ◆ Agreements can be entered into before, during and after marriage
- ◆ Financial Agreements don't have to be just and equitable
- ◆ Financial Agreements don't have to end for all time the relationships of the parties

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- ◆ Financial Agreements are not supervised by the Court consequently there is great scope and flexibility for these documents.

Examples

- ◆ A parent who transfers a property to a child, who is about to get married, can protect that property, from the jurisdiction of the Family Court; leaving the property on separation in the hands of their child.
- ◆ As an alternative, a parent can provide cash to a child to buy a property and the debt be included in a financial agreement.
- ◆ The parties who have financial affairs in various companies can't be unwound without substantial Capital Gains Tax and Division 7A problems can enter into a Financial Agreement to arrange their affairs to give an outcome, not too dissimilar to the outcome that would have been achieved under the Family Law Act, but without the taxation consequences.
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- ◆ Parties who have superannuation may on separation, if regulated by the Act, split their superannuation in accordance with the regulations; however a Financial Agreement can be entered into between the parties relating to their superannuation that enables it to be rolled out in a tax effective manner.



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For more information on Financial Agreements and how to keep your business affairs out of the Family Court, contact Neil Jamieson or Susana Staka.