

# Binding Financial Agreements

The Australasian Lawyers Group Pty Ltd trading as Butlers, Barristers & Solicitors

## What is a Binding Financial Agreement?

This is a written agreement between two people which can be made:

- before marriage (or de facto relationship);
- during marriage (or de facto relationship), and before separation;
- during marriage, and after separation; or
- after divorce (or the end of a de facto relationship).

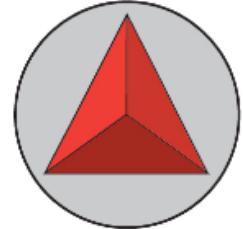
It usually spells out the agreement reached between the couple as to their finances, and the division of their assets and financial resources, if their relationship comes to an end. However, a Binding Financial Agreement may incorporate other matters incidental or ancillary to property issues, such as spousal maintenance and child support.

## Who can enter into a Binding Financial Agreement?

As stated above, a Binding Financial Agreement can be entered into when a couple are entering into a de facto relationship, prior to a marriage, during a marriage or de facto relationship and before separation, during a marriage and after separation, or after a divorce or the end of a de facto relationship. Parties in any of the above situations may enter into a Binding Financial Agreement to divide their assets and financial resources, and provide or contract out of providing for payment of spousal maintenance that might be payable by one of the parties to the other.

## The advantages of a Binding Financial Agreement

A Binding Financial Agreement is intended to avoid the need for Court proceedings. Separation is often a very stressful and expensive affair, particularly where parties are not able to reach agreement and enter into protracted litigation. Unless set aside by the Court, a properly prepared Binding Financial Agreement will have the effect of ousting the Court's jurisdiction to decide on the division of the parties' assets and financial resources, saving parties from potentially stressful, relatively lengthy and expensive Court proceedings. A Binding Financial Agreement is a versatile document which allows parties to record an agreement reached privately between the parties themselves as to the division of assets and financial resources between the parties while still providing the same tax advantages as Orders made by the Court.



All mail to:

PO Box 460  
NEDLANDS WA 6009

**Nedlands (Head Office)**  
83-85 Stirling Hwy  
NEDLANDS WA 6009

**Fremantle**  
3/18 Parry Street  
FREMANTLE WA 6160

**Bunbury**  
119 Beach Road  
BUNBURY WA 6230

Associated Firm  
**Malaysia**  
Jerald Gomez & Associates  
KUALA LUMPUR  
MALAYSIA

Telephone calls  
Answered 24 hours

**Telephone:**  
(08) 9386 5200

**Country Calls:**  
1800 675 200

**Facsimile:**  
(08) 9386 4650

**Email:**  
[legal@butlers.com.au](mailto:legal@butlers.com.au)

**Website:**  
[www.butlers.com.au](http://www.butlers.com.au)

Copyright © 2003 - 2012 - Butlers Barristers & Solicitors

*Disclaimer : This handout is provided by Butlers for general information purposes only. While every care has been taken in preparing this handout, it is intended to be a guide only, and no warranty is given as to the accuracy, currency or completeness of the information contained herein. It is not intended to be, nor should it be, relied upon as a substitute for legal or other professional advice. Formal legal advice should be sought in particular matters.*

# Binding Financial Agreements

The Australasian Lawyers Group Pty Ltd trading as Butlers, Barristers & Solicitors

---

If it is entered into when the couple's relationship is friendly and harmonious, a properly prepared Binding Financial Agreement may promote a positive and healthy relationship between the couple and relieve future stress, disagreement and hostility. Often, the existence of a clear written agreement which is fair to both parties, and reached in circumstances where each party was able to be open, friendly and frank, can make each partner feel much more comfortable. It can reduce uncertainty about future financial issues, in advance, and assist each party to feel more secure within their relationship. For instance, in our experience, we have found that Binding Financial Agreements are particularly suited for situations where one or both of a couple have substantial assets or income, or the likelihood of substantial inheritances, or have assets they want to protect for children of an earlier relationship.

There is no other legally binding manner in which parties may enter into a contract which determines how their assets and financial resources are to be dealt with prior to a separation, other than a Binding Financial Agreement. The Family Court will only make Orders dealing with how the parties' assets and financial resources are to be dealt with, after the breakdown of a marriage or de facto relationship.

Because a Binding Financial Agreement does not need to be lodged or registered with the Court, the Binding Financial Agreement remains confidential to the parties and their advisors and does not form part of the Court record.

The advantage of entering into a Binding Financial Agreement after separation or divorce lies mainly in its flexibility when dealing with superannuation and with the finality it gives in situations where Centrelink is not involved. Further, a technical advantage of a Binding Financial Agreement over a Court Order is that it can be used more than 12 months after a Divorce without the need for an Application to the Court for leave to seek Orders out of time, which is the only way Property Orders can be sought in the Family Court more than 12 months after a Divorce becomes final.

## **What are the disadvantages of a Binding Financial Agreement?**

A Binding Financial Agreement can be a costly document to prepare. Each of the parties will require very specific and detailed independent legal advice. There are strict requirements for a Binding Financial Agreement, and there are broad grounds upon which they can be set aside. This can make the document costly to negotiate, prepare, and have signed. In addition, parties may incur significant costs in relation to a proposed "prior to marriage" agreement which may never actually be used.

Because a Binding Financial Agreement has the potential to come into effect many years after it was initially entered into, the circumstances of the parties may have changed in a manner not contemplated by the parties at the time they enter into the agreement. This may cause issues if the provisions of the Binding Financial Agreement are nevertheless effective. For this reason, we recommend that parties who have entered into a Binding Financial Agreements regularly review their Binding Financial Agreement, much as they would their Wills, to ensure that it remains consistent with their wishes.

**Copyright © 2003 - 2012 - Butlers Barristers & Solicitors**

*Disclaimer : This handout is provided by Butlers for general information purposes only. While every care has been taken in preparing this handout, it is intended to be a guide only, and no warranty is given as to the accuracy, currency or completeness of the information contained herein. It is not intended to be, nor should it be, relied upon as a substitute for legal or other professional advice. Formal legal advice should be sought in particular matters.*

# Binding Financial Agreements

The Australasian Lawyers Group Pty Ltd trading as Butlers, Barristers & Solicitors

---

At present, there is no process for the registration of Binding Financial Agreements with the Family Court of Western Australia so it is important that parties who have entered into a Binding Financial Agreement ensure that the original and signed copies are stored safely and that their whereabouts are recorded.

## Who can prepare a Binding Financial Agreement for me?

Due to the requirement for each party to receive very specific and detailed independent legal advice, it is very important that parties seek the assistance of a lawyer with experience in this area. The lawyer can guide you in the preparation of the agreement and can assist you to ensure that the agreement is comprehensive, accurately records your wishes and is likely to be as final as possible.

It is important that the parties to the agreement give full disclosure of their current financial circumstances. Should either party not fully disclose their financial circumstances, there is the potential that the Binding Financial Agreement may be set aside in the future if the other party seeks to challenge it. This is only one of a number of grounds upon which a Binding Financial Agreement can be set aside.

It is therefore essential that full disclosure is given to your lawyer and that both the intended parties to the agreement receive detailed independent legal advice. It is also recommended that the parties consult their financial advisors as to the potential tax implications and other financial implications of any Binding Financial Agreement.

## Butlers

At Butlers we pride ourselves on being “The Personal Law Firm”. Our commitment at Butlers is to make the law more accessible, affordable, understandable and human. We aim to reduce your concerns by speaking and writing in plain English, cutting through legal jargon and keeping you informed at all times. Through it all, we work closely with your family’s accountant, bank manager, financial adviser, and other professionals as required. We therefore encourage you to contact us if we may be of any assistance.

Copyright © 2003 - 2012 - Butlers Barristers & Solicitors

*Disclaimer : This handout is provided by Butlers for general information purposes only. While every care has been taken in preparing this handout, it is intended to be a guide only, and no warranty is given as to the accuracy, currency or completeness of the information contained herein. It is not intended to be, nor should it be, relied upon as a substitute for legal or other professional advice. Formal legal advice should be sought in particular matters.*