
Property & Financial Matters Family Dispute Resolution

Making Agreements Legally Binding

The vast majority of people who apply to the Court for a decision about children's issues or property settlement are able to reach agreement before the matter is fully heard.

Parties who reach agreement using the Family Relationship Centre are provided with a typed draft of the agreement or a whiteboard printout of agreed items. These are not legally binding documents. To make agreements legally binding, parties should either take the agreement negotiated in family dispute resolution to a solicitor (privately or through a community legal centre) to have it typed in a form that will enable it to be registered with the Court or they can do it themselves.

Financial agreements reached under the Family Law Act 1975 (or Property Relationships Act for de facto couples that separated prior to 1 March, 2009) can be made binding on the parties without the necessity of Court Consent Orders (see details following).

Parenting arrangements can be put in the form of a Parenting Plan which is signed by both parents and dated. Whilst the Parenting Plan is not legally binding it allows parents to change and review arrangements to meet the changing needs of their children. Should matters proceed to court in the future, the court is required to consider the arrangements which are outlined in the Parenting Plan.

Why Make An Agreement Legally Binding?

The advantages of having an agreement made legally binding, particularly financial agreements include:

- providing security for both parties in that the terms cannot be changed unless the court orders or the parties agree;
- enabling enforcement of the agreement in future if necessary;
- where the agreement relates to property settlement, ease of compliance with requirements of banks, other lending institutions and government departments etc.

How Is An Agreement Made Legally Binding?

Agreements may deal with a number of different matters and may be made legally binding in a number of ways.

What follows is a general description of the different kinds of agreements. Parties should speak to a solicitor about which best suits their situation and the procedure involved.

Family Law Act

Parties who are either married or in a de facto relationship, separated or divorced, can apply to the Local Court, Family Court of Australia or Federal Circuit Court of Australia requesting the Court to make orders which reflect their agreement. These are called Consent Orders.

Agreements can be made about most things affecting a separating couple including:

- property settlement;
- child maintenance (but not Child Support for a child whose parents come under the administrative assessment scheme of the Child Support Agency (CSA) unless relating to urgent interim Child Support. People who come under the scheme and wish to formalise an agreement about Child Support will need to make a Child Support Agreement (see later)
- where the children will live, the time the child will spend with each parent and shared parental responsibility decisions such as education, health, religious upbringing etc.

Once made, Consent Orders:

- have the same effect as if the Court had heard the matter and then made a decision;
- can be obtained relatively quickly and generally do not involve appearances in Court;
- do not prevent either party from instituting court proceedings if the agreement breaks down at a later stage;
- can be set aside where the agreement was obtained by fraud or undue influence, or where the parties agree.

Financial Agreements - Family Law Act

Parties can enter into agreements that will be binding and prevent the property, the subject of the agreement, from being the subject of a property or a maintenance order under the Family Law Act.

A financial agreement made in Family Dispute Resolution is not binding. However, this agreement can be made binding if it is signed by both parties and the agreement contains, in relation to each spouse party to the agreement, a statement to the effect that the party to whom the statement relates has been provided, before the agreement was signed by him or her, set out in statement form and annexed to this, with independent legal advice from a legal practitioner as to the following matters:

- the effect of the agreement on the rights of that party;
- the advantages and disadvantages at the time that the advice was provided to the party of making the agreement. The annexure to the agreement must contain a statement signed by the person providing the independent legal advice stating that the advice was provided.

Child Support Agreements

Families who are entitled to apply for an assessment under the Child Support Scheme have the option of making an agreement about the amount of Child Support to be paid.

If the parties want the child support collected by the Child Support Agency, the agreement must be made in writing, signed by both parties and registered with the Agency. This is called a Child Support Agreement.

Once the agreement is accepted by the Registrar of the Child Support Agency, it has the same effect as an order of the Court and can only be changed if both parties make another agreement or by applying to the Court.

Child Support agreements can make provision for payment of a regular periodic amount, or for payment of Child Support in other ways; e.g. payment of school fees, health insurance, mortgage etc. or by way of property settlement. If the parties agree that Child Support is to be paid in kind, the agreement must specify the annual value of the financial contributions by the parent with whom the child does not live and clearly state that the amount is to be credited against their Child Support liability. Child Support agreements can be either “Limited” (normally to a particular timeframe) or “Binding” which are in place until the child ceases to be eligible for support under the child support legislation, and are agreements that are much more difficult to set aside.

Any agreement which makes provision for the maintenance or support of a child whether the parents are entitled to an assessment or not, can be registered for collection by the Child Support Agency.

The information contained in this handout is general information only. It is supplied on the understanding that the Family Relationship Centre is not providing legal advice on a particular matter, or at all. The handout contains information that is intended to assist those attending Property & Financial Matters Family Dispute Resolution.

Errors and omissions can occur in the preparation of material.

The Family Relationship Centre does not accept any responsibility for any errors or omissions in the accuracy or completeness of this material.

We strongly recommend the obtaining of specific independent legal advice.