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LAWYERS & ATTORNEYS

Financial separation options

BFA, consent orders or court.



Goldman & Co Lawyers Pty Limited
Sydney | Melbourne | Brisbane



Three Options

You have three options;

1. A "Consent Order" made by the Court;
2. Or a "Binding Financial Agreement" ("BFA").
3. Or sort out the matter by going to Court as the above two options require the agreement of both parties on how the assets are to be divided.

What Is The Difference?

If you decide to use a BFA, both of you will need to get independent legal advice. You can get your lawyer to give you legal advice and draft up the BFA and your partner can have their lawyer review the BFA and provide them with legal advice.

A BFA can only deal with financial or property matters, whereas Consent and Court Orders can deal with parenting matters as well.

If you cannot agree, then we must lodge an application for the court to decide the matter (or it may resolve at mediation before the hearing. This is often the case).

Fair And Reasonable?

A court will only make orders on your **Consent Orders** if they think that what you have agreed on is **fair and reasonable** to both parties

A **BFA may not necessarily be fair to both** of you and it is possible that you or your partner may have a more advantageous settlement.

A lawyer may also prepare a Letter of Advantage/Disadvantage when they review a BFA so that their client is aware of the effect of the BFA.

Independent Legal/Lawyers Needed for a BFA?

Consent Orders are enforced by the Court as any other Court Order. A BFA is only enforceable where both of you have received independent legal advice.

If a BFA is prepared without this independent legal advice, the BFA is void and unenforceable.

A Certificate of Independent Legal Advice is required to be prepared and signed to show that both of you have received independent legal advice.

Full Disclosure A Must

In both cases the parties must disclose all assets, whether in their name or not, and liabilities. The documents may be overturned and contempt of Court penalties may apply if full disclosure is not made.

What Assets Are Covered In A Property Settlement

All of the parties current assets, liabilities and financial resources are considered. This will include both parties superannuation and pension entitlements.

Property Includes

- Any property held in one name or in trust;
- Jointly owned assets;
- Superannuation;
- Business interests;
- Shares or interests in a company;
- Family trusts as well as other trust interests;
- Funds or interests over which a party has either control or influence;
- Assets owned prior to the commencement of the relationship or accumulated during the relationship;
- Assets acquired post-separation;
- Prospective entitlements for example inheritances, redundancy payments and long service leave may even be included in certain circumstances.



Liabilities

Liabilities are also considered in the same way and they will include both parties debts, credit cards, loans, tax and stamp duty obligations and that is irrespective of whether they are in joint names or the name of one party.

How Does A Court Decide How To Divide Assets And Debts?

There is no formula used to divide your property. No one can tell you exactly what orders a judicial officer will make. The decision is made after all the evidence is heard and the judicial officer decides what is just and equitable based on the unique facts of your case.

With our considerable experience, however, we can guide you as to the likely range of outcomes.

General Principles

The Family Law Act 1975 sets out the general principles the court considers when deciding financial disputes after the breakdown of a marriage (see Sections 79(4) and 75(2)) or a de facto relationship (see Sections 90SM(4) and 90SF(3)).

The general principles are the same, regardless of whether the parties were in a marriage or a de facto relationship, and are based on:

- A. working out what you've got and what you owe, that is your assets and debts and what they are worth;
- B. looking at the direct financial contributions by each party to the marriage or de facto relationship such as wage and salary earnings;
- C. looking at indirect financial contributions by each party such as gifts and inheritances from families;
- D. looking at the non-financial contributions to the marriage or de facto relationship such as caring for children and homemaking; and
- E. future requirements – a Court will take into account things like age, health, financial resources, care of children and ability to earn.

Time Limits For Applications For Property Adjustment?

If you were married, applications for property adjustment must be made within 12 months of your divorce becoming final. If you were in a de facto relationship, your applications for property adjustment must be made within 2 years of the breakdown of your de facto relationship. If you do not apply within these time limits, you will need special permission of a Court (leave to apply). This is not always granted.

Our Australian family law team.



Jaswinder Sekhon

Director/Senior Lawyer

Jaswinder strives to simplify and demystify complex family law matters. He very much enjoys being helpful by enlightening his clients with his specialised legal, strategic and commercial skills.



Jennifer Cheal

Senior Associate/Practice Manager

Jennifer has more than 10 years experience working in the legal industry as a solicitor and in family law. She is a senior lawyer and legal practice manager. She studied law at UWS before being admitted in 2009.



Mathew Nott

Senior Lawyer

His focus is criminal and family law; especially domestic violence and matters that cross over between the family, criminal and child protection laws.



Kim Janisse

Paralegal and legal support

Kim Janisse is the Business Development Manager at Goldman & Co. Lawyers, having joined the firm in 2017. Kim brings with her many years of experience in family law and all legal matters as a paralegal and for client support during stressful legal proceedings.


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