

# Binding Financial Agreements

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## What is a prenuptial agreement?

Binding Financial Agreements (BFAs) as they are known in Australia are made before marriage and are designed to protect your assets. If such an agreement is entered into, it may exclude assets in the agreement from the asset pool of both spouses, provided that the agreement has been drafted correctly.

## Who should get a Binding Financial Agreement?

A BFA can be made by couples before they get married. They are particularly useful in second marriages, where both spouses have children from previous relationships. Spouses may wish to enter into these agreements to ensure that certain assets brought to the second marriage will pass to their children of a previous relationship. A BFA is also useful in cases where one spouse has considerably more assets than their partner (including businesses, farms, inheritance, gift, lottery wins or other financial assets they want to keep if the relationship should fail). BFAs are complex and can in some circumstances be successfully challenged in Court. We can assist in identifying whether the option is best for your family circumstances.

## How do you get a Binding Financial Agreement?

If you are considering entering into a BFA, it is imperative that it complies with Section 90k of the Family Law Act 1975 (Cth). Otherwise, it can be set aside by courts. For a BFA to be enforceable:

- It must be in writing, dated, signed and witnessed by both spouses;
- Each party must receive unbiased and independent legal advice;
- The legal advice must be given by a lawyer in Australia; and
- It must contain a full and frank disclosure of assets, liabilities, expenditure and income

Every case and circumstance is different. Courts may set aside a BFA in circumstances where enforcing the agreement would cause substantial hardship on one spouse, particularly if they are caring for a child.

For advice in relation to Binding Financial Agreements, contact us on **1800 300 170** or email us at [familylaw@matthewsfolbigg.com.au](mailto:familylaw@matthewsfolbigg.com.au)

### Disclaimer

***Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the uniqueness of your individual situation, professional advice should be sought. For advice, please contact one of our Family***

**Lawyers.**