Prenuptial Agreements and the importance of complying with the Family Law Act

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A prenuptial agreement, known as a 'binding financial agreement' under the the *Family Law Act*, is an agreement with your partner to predetermine how your assets will be distributed in the event of the breakdown of your relationship.

It is important that you speak with one of our prenuptial agreement lawyers to ensure the agreement complies with the *Family Law Act* so as to ensure that there can be no challenge to the enforceability of the agreement.

You and your partner can enter into a binding financial agreement prior to the commencement of the marriage / de facto relationship, throughout the marriage / de facto relationship, or after you have separated and or divorced..

A prenuptial agreement lawyer can advise you that the benefit of a binding financial agreement is it can deal with all assets including superannuation, inheritances, trusts, businesses, investments, shares, debts and other liabilities. If you would like to look further into the benefits of a prenuptial agreement, please click here for further information.

The *Family Law Act* requires strict compliance in order for a financial agreement to be binding on all parties. In summary, it expressly requires the following:-

1. the agreement is signed by all parties;
2. each spouse party was provided with independent legal advice before signing the document which included advice regarding the rights of that party, and advice about the advantages and disadvantages of that financial agreement; and
3. each spouse party is provided with a signed statement by the legal practitioner and said statement is provided to the other spouse party.

If compliance is not followed, the financial agreement will not be binding and the Court will need to exercise its powers in relation to splitting up the asset pool just and equitably.

The Court also has the power to set aside a financial agreement. A prenuptial lawyer can advise as to the grounds that such an agreement can be set aside. These include if the Court finds that:-

1. the agreement was obtained by fraud, which includes not disclosing material assets or liabilities;
2. the agreement was entered into for the purpose of defrauding or defeating a creditor(s) of the party;

3. the agreement is void, voidable or unenforceable; or
4. there is a significant change in circumstance (i.e. hardship, a change relating to the care, welfare and development of a child to the marriage, or a party engaged in conduct that was unconscionable).

Again, it the financial agreement is set aside, the Court will then exercise its powers in relation to splitting up the asset pool just and equitably.

It is recommended that you speak with one of our prenuptial agreement lawyer to comprehensively advise you in your endeavours at planning ahead and assist in creating a valid prenuptial agreement.

Contact us on 1800 300 170 or email us at famlaw@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.