



AFTER SEPARATION

If you and your former spouse agree on a property settlement, you can choose to either enter into a written Binding Financial Agreement (BFA) or get a Court Consent Order to formalise the agreement.

To be binding, BFA's must comply with strict legal requirements which Consent Orders do not. BFA's will not be binding where:

- there was fraud or dishonesty;
- one of the parties acted unconscionably or unfairly;
- there is a major change in the children's care and welfare; or
- each party did not receive independent legal advice and have their lawyer sign the BFA to confirm that this advice was given.

WHEN TO USE A BFA AND WHEN TO GET A COURT ORDER

Because of the increased certainty of Consent Orders, they are generally the preferable option.

Consent Orders are also the only option available if either you or your former partner do not wish to obtain independent legal advice.

On the other hand, a BFA may be preferred where there is the possibility that the terms of the property settlement are not "just and equitable". This is because if the property settlement is not "just and equitable", a Court will *not* make it into an Order. However, a BFA which is not "just and equitable" can be entered into and can be held to be binding. While this may make BFA's attractive, it is also why it is crucial to obtain and carefully consider independent legal advice before entering into a BFA.

Another reason why a BFA may be preferred is where the parties do not wish to submit their complete financial and parenting information to the Court system. With a BFA, it is private, and only the parties' lawyers need to view and retain this information.