

Update: 29 November 2006 'Pre-nups': A new direction in Estate Planning?



Fleming Muntz
Solicitors



Summary

Binding Financial Agreements (**BFA's**) – otherwise known as “Pre-nups” are becoming a more popular estate planning tool, particularly in the farming community, in business, and in second relationships.

What's changed?

Family Law legislation was changed some years ago to allow parties to a marriage to enter into BFA's that fix how property is to be distributed if there is a marriage break-up.

More recently, willmakers are seeing the benefit of BFA's in ensuring that long held family assets are *excluded* from Family Law property proceedings.

What are the benefits?

People forming second or further relationships later in life are able to sign BFA's to give certainty to their family. It can be an important document where a party is bringing family wealth into a new relationship, or where a family business is being transferred.

A BFA reduces the chance of a successful family provision claim by a spouse or partner, and significantly enhances the prospect that nominated property will be excluded from any future court proceedings.

As an example, farming parents are able to pass on long held farming assets to children, with a reduced risk that the assets will be lost in future matrimonial proceedings.

What are the problems?

A BFA has to be handled carefully, to ensure that it is enforceable – for example, the parties must have independent legal advice.

A BFA can be still set aside in certain circumstances, including fraud, a significant material change leading to hardship to a party, or where a party has engaged in “unconscionable conduct” when making the BFA.

There is a fear that a spouse or partner will object to signing a BFA – in reality, many parties accept readily that long held family assets should *not* be divisible, and are happy to sign the BFA.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

We resent unwanted email as much as anyone – if you would prefer not to receive any further updates, please telephone us on (02) 6021 2222 or email to fmlaw@flemingmuntz.com.au.

For more information, please contact:



Paul Muntz
Dip Law (SAB)
Accredited Specialist Business Law
Principal
Telephone: (02) 6021 2222
Email: prm@flemingmuntz.com.au

**Solicitors for New South Wales
and Victoria**

568 Kiewa Street
Albury New South Wales
Australia

PO Box 910
Albury NSW 2640

fmlaw@flemingmuntz.com.au
www.flemingmuntz.com.au

Facsimile (02) 6041 1804
Telephone (02) 6021 2222

