

Wealth, love and separation

No one likes to think that their relationship might break down. But there's a way to protect your assets if you and your partner do decide to part ways.

While some relationships do last a lifetime, it's a sad fact that many don't. So while you (or a family member) may well enter wholeheartedly into a relationship and be willing to share everything you own with your partner, it can pay to take steps to protect your assets.

Binding Financial Agreement

A Binding Financial Agreement (BFA) is an asset protection and estate planning tool. You could compare a BFA to an insurance policy. You hope never to have a car accident, but if you do your insurance provides peace of mind. A BFA helps protect against the loss of your assets in a relationship breakdown.

A BFA can include the current and projected property ownership and super belonging to you and your partner. The BFA will determine how you divide any property and super that exists at the date you separate. So a BFA is an evolving document; it caters for the splitting of your assets at a future date.

You could also consider a 'Mini BFA'. A Mini BFA deals specifically with one asset by excluding that asset from any division if you separate; how all other assets you and your partner have accumulated are split would be negotiable if you separate.

Strict requirements

A BFA must meet strict requirements to ensure it will, if necessary, hold up in a court at a future date.

Under the *Family Law Act 1975*, a BFA is binding if all the following conditions have been met:

1. The agreement is signed by all parties.
2. Each party has, before signing the agreement, been provided with a certified annexure to the agreement containing independent legal advice from a legal practitioner about:
 - the effect of the agreement on the rights of that party
 - the advantages and disadvantages, at the time the advice was provided, to the party of making the agreement.
3. Each party (either before or after signing the agreement) has been provided with a certificate signed by the person providing the independent legal advice stating that they provided the advice (whether annexed to the agreement or not) and a copy of this certificate has been provided to the other party.
4. The agreement hasn't been terminated or previously set aside by a court.

A BFA may not be for everyone. But if you've been stung by divorce or separation in the past, it's a tool you may consider using in the future.

You should seek advice from an accredited family law specialist to draft a BFA or Mini BFA. Your financial adviser can recommend a specialist in your area to help you with your BFA needs.

Case study

Bob decides to sell an investment property and give \$500,000 to his son Darryl and Darryl's de-facto Claire to buy a townhouse.

Bob is cautious about the money he is giving them and the fact that their relationship might not work out. Bob decides to reassure himself by entering into a mini BFA with Darryl and Claire.

Under the terms of the Mini BFA, if Darryl and Claire separate they will either have to sell the property or one of them will have to buy the other out.

The 'loan' of \$500,000 will then be paid back to Bob.