HER BEST MOVE NOW · RESOURCE

Understanding Agreements

How an agreement is structured matters as much as what it contains

Informal agreements can feel final — and they rarely are, in the way you need them to be. Understanding the difference between the types of agreement, and what each one means in practice, helps you make a clear-eyed decision about what you are signing, and what it will protect.

The Four Types of Agreement

Not all agreements carry the same legal weight. Understanding which type you are being asked to enter — and what it does and does not protect — is essential before you commit to anything.

TYPE 1

Informal Agreement

A verbal or written understanding between two parties — without legal formalisation. This might be an email exchange, a handwritten note, or a mutual understanding reached in conversation. It feels resolved. In legal terms, it is not.

WHAT IT OFFERS	WHAT TO KNOW
– Quick and low-cost to reach – Feels like resolution – Preserves a cooperative tone	– No legal enforceability – No protection if circumstances change – No formal recourse if not honoured – No finality — either party can return to dispute

TYPE 2

Consent Orders

· RECOMMENDED ·

An agreement reached between both parties that is submitted to the Family Court of Australia for approval. Once approved, it becomes a court order — legally binding and enforceable. This is the most common path for couples who have reached agreement but want it formalised and protected.

WHAT IT OFFERS	WHAT TO KNOW
– Legally binding on both parties – Enforceable if breached – Does not require attending court – Can cover property, superannuation, and spousal maintenance – Provides stamp duty and CGT concessions in most states – Provides finality — the matter is resolved	– Requires both parties to agree – Must be drafted correctly — legal assistance is recommended – The court will not approve an agreement that is clearly unfair to one party – Relatively low cost compared to litigation

TYPE 3

Binding Financial Agreement (BFA)

A private contract between parties that deals with financial matters. Unlike consent orders, a BFA does not go through the court — but both parties must have received independent legal advice before signing. BFAs can be made before, during, or after a relationship.

WHAT IT OFFERS	WHAT TO KNOW
– Legally binding when correctly executed – More flexibility in what can be agreed – Does not require court approval – Can be entered at any stage of the relationship	– Both parties must have independent legal advice — non-negotiable – Can be set aside if improperly executed, signed under duress, or significantly unfair – More complex and typically more costly than consent orders – Does not attract the same CGT and stamp duty concessions as consent orders in all states

TYPE 4

Contested Court Proceedings

· LAST RESORT ·

When parties cannot reach agreement, the Family Court determines the outcome. The court considers contributions (financial and non-financial), future needs, and what is just and equitable. This process is slow, expensive, and the outcome is in the hands of a judge rather than either party.

WHAT IT OFFERS	WHAT TO KNOW
– Agreement cannot be reached through negotiation or mediation – There is a significant power imbalance or non-disclosure – One party is not engaging in good faith	– Costly — legal fees can be substantial for both parties – Slow — proceedings can take one to three years – Emotionally demanding – The court's view of fairness may differ from either party's

Questions to Ask Before You Sign Anything

Bring these to your solicitor. There are no wrong questions — only agreements signed without asking them.

? Is this agreement legally binding — and what happens if it is not honoured?

? What does Australian family law say I am likely entitled to — and how does this compare to what is being proposed?

? What are the tax implications of this settlement — now and in the future?

? Are there any assets I may not have been made aware of?

? How will superannuation be dealt with — and is a superannuation splitting order part of this agreement?

? What are my ongoing obligations under this agreement — and what are the other party's?

? What would a different settlement structure look like — and what are the trade-offs?

? Once this is signed, what can be revisited — and under what circumstances?

? Is there anything in this agreement that concerns you — that you think I should understand before I sign?

WHAT TO WATCH FOR AT THIS STAGE

— Agreeing to something because it feels easier than continuing the conversation

— Relying on goodwill, or a verbal promise, without written and legally formalised structure

— Leaving key details unresolved — vague agreements invite future disputes

— Signing anything without having had independent legal advice

— Making significant decisions under time pressure or emotional exhaustion

— Assuming that what is offered is what you are entitled to

Being well informed at this stage means you can recognise what a genuinely fair outcome looks like — not what you've been told it is. You can weigh different approaches, understand their long-term implications, and be confident that what you walk away with is rightfully yours.

Disclaimer: *The information here is general in nature. It reflects common questions and considerations that arise during life transitions — it does not constitute legal, financial or professional advice, and it is not tailored to your individual circumstances. Where your situation is complex or the stakes are high, speaking with a qualified professional is likely to be worthwhile. Use what is useful. Leave what isn't.*