

A PLAIN ENGLISH GUIDE TO



>>DOMESTIC RELATIONSHIP AGREEMENTS

Sometimes de facto couples like to have a binding agreement about how their property and financial resources will be divided if they separate.

Before entering into such an agreement careful consideration needs to be given to a range of issues. This Plain English Guide answers some commonly asked questions about Domestic Relationship Agreements, but remember it is important you obtain professional advice from your lawyer about this complex area of the law.

De facto couples (including same sex couples) and others living in a domestic relationship can enter into binding financial agreements under the provisions of the Property (Relationships) Act. These agreements can be made prior to the commencement of the relationship, during the relationship or following its termination. Agreements made prior to or during the relationship are known as domestic relationship agreements. Those made following the end of a domestic relationship are known as a termination agreements. Agreements under the Property (Relationships) Act may deal with the maintenance of either or both of the parties to the relationship, the property of the parties or either of them and the financial resources of the parties or either of them.

Often parties entering into a de facto relationship wish to have a binding agreement which sets out how their property and financial resources are to be dealt with in the event that their relationship breaks down. This is particularly the case when one or both of them has been in a prior marriage or de facto relationship and has children of that relationship whose interests need to be protected.

>>What is involved?

The drafting of a domestic relationship agreement is complex. The parties entering into the agreement need to give careful consideration to what they want the agreement to provide. They need to think about how they plan to arrange their finances. They also need to think about all the things that might happen in the future, whether expected or unexpected, such as the birth of children, loss of employment, illness or disability, inheritances and so on.

There are certain formal requirements that need to be met. In order to be binding, a domestic relationship agreement must be in writing and signed by both parties. Each party must obtain independent legal advice and the lawyers advising the parties must sign certificates to say that they have given independent advice.

>>What is the effect of a domestic relationship agreement?

Provided a domestic relationship agreement satisfies all the formal requirements then, subject to certain exceptions discussed later in this guide, a court cannot make an order in relation to the property or financial resources of the parties or in relation to the maintenance of either of them if

that order would be inconsistent with the terms of the agreement. If there is an agreement in existence which does not comply with all the formal requirements then a court may have regard to the terms of the agreement but is not bound by it.

>>When will a domestic relationship agreement not be binding?

A court may vary or set aside the provisions of a domestic relationship agreement in the following circumstances:

- where, in the opinion of the court, the circumstances of the parties have so changed since the time at which the agreement was entered into that it would lead to serious injustice if the provisions of the agreement were enforced; or
- where the parties to the agreement have, by their words or conduct, revoked or consented to the revocation of the agreement or the agreement has otherwise ceased to have effect.

Domestic relationship agreements are subject to the general laws relating to contract. This means that an agreement may be unenforceable if there has been fraud, misrepresentation, duress, undue influence or unconscionable conduct. These are complex legal concepts which your lawyer can explain to you. The failure by one party to a domestic relationship agreement to make a full financial disclosure to the other party may mean that their agreement is unenforceable. It is therefore important that each party gives the other full details of their income, property and financial resources. This is usually done by including this information in the agreement.

>>Advantages of a domestic relationship agreement

A well drafted domestic relationship agreement, prepared after proper consideration by the parties as to what they require, can enable a couple to begin or continue a relationship knowing that if the relationship ends they will not have to fight about the division of their property. This can be particularly important for someone who has already experienced a relationship breakdown.

>>Disadvantages of a domestic relationship agreement

The law in relation to the enforceability of domestic relationship agreements is complex and it is always possible that circumstances might arise which will cause the agreement to be unenforceable. If an agreement is entered into without careful thought then something might happen in the future which was not anticipated and which makes the terms of the agreement unfair.

>>What should you do if you want a domestic relationship agreement?

If you intend to enter into a domestic relationship agreement then you must first think about how you want your property and financial resources and your partner's property and financial resources to be dealt with if your relationship breaks down. You and your partner should discuss your future plans including:

- whether you both intend to work throughout your relationship;
- whether you plan to have children;
- what arrangements there will be in relation to children that either of you currently have;
- what will happen if either of you can't work because of illness or injury or the need to care for a disabled child;
- whether you wish to make special provision in relation to inheritances and if so what you expect to receive and what you expect to do with your inheritance;
- what provision you each intend to make for retirement;
- how you intend to meet your financial commitments and pay your living expenses; and
- whether you intend to have a joint bank account or intend to keep your finances separate.

Once you have thought about these issues you should talk to your lawyer. Your lawyer will need a detailed statement of your current income, property, debts and financial resources. The more information you provide the more likely it is that your agreement will be binding. If possible you should obtain evidence of the value of substantial assets and provide recent statements relating to bank accounts, shareholdings, superannuation interests and other investments.

Your lawyer will discuss with you what you need to cover in the agreement and will then draft the agreement. Once both you and your partner are happy with the terms of the agreement, you will both sign the agreement and you will each retain a copy in case you need to rely upon it in the future.

>>Termination agreements

A couple whose relationship has ended or is about to end can enter into a termination agreement. This enables them to have a binding and enforceable arrangement as to how they will share their property and financial resources

following the breakdown of the relationship without having to go to court. A termination agreement has certain benefits in so far as duty and capital gains tax are concerned. Your lawyer can explain these benefits to you.

>>What relationships are covered?

Domestic relationship agreements and termination agreements can be entered into between:

- heterosexual de facto couples;
- same sex couples living together;
- others in a domestic relationship living together in circumstances where one or both of them provides domestic support and personal care for the other, for example a mother and daughter or close friends.

>>How can Coleman & Greig help you?

Coleman & Greig's experienced family law solicitors can:

- Advise you how you might be able to protect your financial position in the event that you are to marry;
- Assist you to reach a financial settlement following the breakdown of your marriage or de facto relationship;
- Advise you about your rights and obligations in relation to child support; and,
- Represent you in any negotiations or court proceedings concerning children.



>>Interpreter Services

Coleman & Greig can provide interpreter services in a range of foreign languages including:

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- Assyrian
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- Italian
- Samoan
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>>Other Services

Coleman & Greig provides a wide range of services including:

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