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Binding Financial Agreements

A general Introduction to:

Binding Financial Agreements including for Pre-Nuptial Agreements[1]

What is a BFA?

A BFA can be made before a marriage, during a marriage or after a marriage. Generally, the agreements set out how a couple's property and financial resources are to be divided in the event of the breakdown of the marriage and the maintenance of either of them during the marriage and/or after the marriage.

- A BFA continues to operate despite the death of a party to the agreement and operates in favour of, and is binding on, the legal personal representative of that party.
- A BFA may be terminated by the parties to the agreement by:

  ◊ terminating the agreement in a subsequent binding financial agreement; or

  ◊ making a written agreement (a termination agreement) to that effect.
- A binding financial agreement, is not subject to any duty or charge.

Advantages of a BFA

- A BFA is the only methodology in Family Law by which an agreement can be entered into in order to close off certain rights.
- A BFA can actually enhance the relationship of parties as it can settle any suspicions that may be present regarding financial issues in the marriage.
- It enables parties to contract out of the rights and entitlements that are provided for under the Family Law Act.
- It can be used before, during or after a marriage.
- It may include matters that are ancillary and incidental to property and maintenance matters, such as partnership or business arrangements.
- A BFA can also be used as an interim arrangement, after separation.
- Parties are able to use a BFA to re-arrange their financial affairs while still married.