

# FORMALISE YOUR FINANCIAL SETTLEMENT

(before someone changes their mind)



If you've reached agreement about how you want to wrap up your finances, now that you've separated, it's important to get your arrangements documented in a legally-binding form. That's the only way to give you both certainty about what you will each receive in your settlement and ensure you will have no further claims against each other in the future.

This Guide covers the basics you need to understand about why and how to do that.

## 1. Do we really need a formal agreement if we're amicable?

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You may well be on amicable terms (or at least civil terms) now and you may have agreed on your financial settlement terms. If so, congratulations – you're in better shape than many separating couples.

But as the subsequent months and years after separation go by, things can change. New partners or influences can enter your lives. There may be windfalls for one of you or calamities for the other. Your attitude may change, or your ex's attitude may change.

Your ex may have been OK about that deal you made back in 2019, but a few months or years down the track he or she has a change of heart and "comes back at you for more".

Having a formal and legally binding agreement in place "draws a line in the sand" and gives you the confidence that your ex will have no further claims on you in the future.

So if you have agreement now, then get on with formalising it – before one of you starts to change their mind.

## 2. And there are a few other reasons, too

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If your settlement includes transfer of a property title – between you, or from joint names to one name – then you can be exempt from Stamp Duty if you have a formal legally binding settlement, saving you thousands.

If you are doing a mortgage refinance – for example switching from a joint mortgage to just one of you being responsible for the mortgage – your bank will almost certainly require a formal, legally binding agreement.

If you are doing a superannuation transfer, it's mandatory to have a formal legally binding agreement in place.

## 3. Is there any hurry? Why not delay?

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Unfortunately, delay can be financially dangerous for you. What you thought was an amicable parting, where you trusted each other that the deal was the deal, can quickly turn into an almighty fight.

With delay, no matter who causes it, usually both parties get angrier and angrier. Opinions about the past and who “deserves” what shift. Unresolved arrangements frequently lead one or both parties to resort to “lawfare”, with eye-watering litigation fees that decimate your financial position, so you both lose (as do any children).

With many separated couples, at least one of them re-partners quickly – a new “voice in the ear” is another very common trigger for a verbal agreement to break down. Even if your ex’s new partner seems like a nice person, when money from your relationship is entangled in their new life, well, that’s a recipe for trouble.

When you eventually settle, you must declare the values at the time you sign the documents, not values at the time you split. So, if you’re intending to retain a house and you expect prices to rise, your ex may get an uplift in wealth each year you delay – at your expense.

Even long after separation, and even if you’ve divided your wealth and made payments to each other, and even if you’re re-partnered with someone new, a Court can order you to make further payments. Courts can override what you’ve verbally agreed and can even award payments to your ex based on future wealth you might create.

So, a bit like buying insurance, sensible Australian couples formalise their financial settlements to give themselves the protection they need to move ahead with their lives.

***A formal, legally binding agreement protects each of you against claims by the other for more settlement money in the future.***

## 4. There are two ways to do this

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There are two ways (and only two ways) you can create legally binding financial documents:

1. One is called **Consent Orders**. In essence, this means seeking the approval of the Family Court for your proposed settlement terms. The Court must be convinced that your agreement is fair.
2. The other is a **Binding Financial Agreement**. This is a private agreement between the two of you, but each of you is required to have a lawyer review the agreement before you sign.

Consent Orders are the more common approach, but Binding Financial Agreements are appropriate for some couples. So it’s important to choose the right one for your circumstances.

## 5. How Divorce Partners can help you

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Divorce Partners is not a law firm. We’re a specialist financial settlement firm. We only work for couples, not just “one side”.

So **we are neutral**. And that makes a crucial difference:

1. Because we work for both of you, we can go back and forth between you, quickly and informally, **to iron out any issues**. Lawyers, by contrast, tend to write letters to each other, which takes months.
2. **We won’t “unstitch” your deal**. Lawyers – each working for just one party – tend to find reasons why they think the deal is not good enough for their client. When that happens, the deal often gets undermined and falls apart – with new levels of acrimony.

We don't work that way. If you have a deal with your ex, let's find a way to make it happen, not undermine it. We only want to ensure that your proposed deal is in the "sensible, normal zone" like most couples with facts similar to yours.

We do all our work by phone and email. You don't need to get dressed up, drive, park and wait in our offices for meetings. **Convenience and efficiency are key.**

That also means **you don't have to see each other** to get this done – for some former couples, that's a real blessing.

We charge **low, fixed-price fees**. Because we handle large numbers of clients, and we use technology to keep things efficient, our services are among **the least expensive** in Australia.

**It's more effective and less expensive to use a neutral party**

## 6. What are the steps?

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We'll ask you to complete a Checklist of the information required. That's mostly financial details about the two of you (your incomes, and what you own and what you owe) and also family information (birthdates, length of relationship, children, etc).

We'll tell you what you can and can't achieve. For example, some ideas like paying a cash settlement over ten years are unlikely to be approved under the Consent Order process. If your deal needs some tweaking here and there, we help you work that through as well.

We'll prepare drafts of the documents that are needed. You'll check these to make sure the details are accurate and correctly reflect the settlement terms you've agreed.

If you're seeking Consent Orders, we'll then have a law firm review the papers and then lodge electronically with the Family Court. If we're doing a Binding Financial Agreement, we'll brief a law firm for each of you, to review the agreement before you sign.

It's all done by email and phone, so you don't need to come into an office. You reply when you have time at home or as suits you.

Once your agreement is finalised, you'll proceed to undertake the tasks you've agreed, like selling houses or making cash payments or transferring cars or superannuation, within the timeframes you committed to.

When you've met all your obligations, you will each have no further claims on each other. You are good to move on with your life.

## 7. How long does it all take?

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A few factors will affect how long it takes. We can do our work in just a few days. But it's mostly dependent on you providing all the information requested – some couples take weeks!

Once we have all the info, we can complete the drafts and brief the selected law firm(s). The lawyers usually take a few days to review and finalise the documents for you to sign.

If you're doing a Binding Financial Agreement, you sign and that's it. If you're doing Consent Orders, the papers are then lodged with the Family Court, who'll take 4 to 8 weeks to approve the application.

## 8. What does it cost?

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You'd be astonished at the wide range of fees that people try to charge you to help create formal agreements. Some law firms are decent and reasonable, but others are outrageous, charging up to \$8,000 just for one of you and insisting the other of you get another firm who will charge more on top.

At Divorce Partners, we charge flat fees, not "by-the-hour" fees, to help you prepare legally binding agreements. So you know exactly what it will cost before we start – no hidden surprises.

We'll give you a fixed price quote once we know how simple or complex your proposed settlement deal is.

For most cases we charge between \$750 and \$1,500 (+GST) for each of you. That includes any fees for lawyers. We provide credit card options and Instalment Payment Plans – you can get the process under way for as little as \$250 (+GST).

## 9. How can we get started... or just find out more?

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Every separating couple's situation is unique. So we recommend we have a phone discussion, to understand your situation and the deal you are proposing and give you a fixed fee quote.

Don't worry if you're not exactly certain about every element of what you think your deal will consist of. We can help sort out the remaining details.

Just book a time for a quick chat, [using this link](#). There's no charge for the consultation.

We look forward to hearing from you soon.



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