



What to do before you say 'I do'...

Client Guide

What to do before you say 'I do'



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Planning for your life together

A couple needs to carefully plan for some important legal issues...

Practical issues like:

- > How do I change my surname?
- > Do I need to change my passport?
- > Can I change my passport before our honeymoon?

Life changing issues like:

- > I had a house before we met. Can I keep that if we separate?
- > Is a pre-nup legally binding?
- > What happens to my assets if I am seriously injured?
- > What about my children if I die?

This guide identifies important issues relevant to all couples, and is for:

- > Anyone considering a long term relationship
- > Existing couples
- > Separated Couples
- > Married couples
- > De Facto Couples

This guide can help you:

- > Have peace of mind about what will happen if you separate
- > Have peace of mind about what will happen if you die or are seriously injured
- > Avoid huge and unnecessary legal expenses

Structure of this guide

This guide is structured as follows:

Part A: How can I raise these issues with my partner?

Part B: Financial Agreements

Part C: Wills and Enduring Powers of Attorney

Part D: Now we're a couple... what next?

Part E: Questionnaire for Financial Agreements

Part F: About contacting us

Part A: How can I raise these issues with my partner?

Without a Will or Financial Agreement there is no guarantee that what you would like or had intended to happen to your hard earned assets, will actually happen. Every couple, whether married or

de facto, should carefully consider these issues as part of their financial planning. Raising these issues with your partner need not cause dispute and can actually promote communication.

Often the more information you and your partner have about the preparation of a Will or Financial Agreement, the easier it is to discuss. **We suggest that the first step could be for you to read through this guide with your partner.** We can also answer any questions you may have at an initial consultation. For more information please contact us on 1300 625 297.

Part B: Financial Agreements

What is a Financial Agreement?

When a couple separates, many decisions have to be made about the future. There can be disputes over property matters like:

- Will we sell the house?
- Who pays for the mortgage?
- Can my former spouse receive a share of the assets I had before we met

Financial Agreements are binding agreements to finalise disputes about financial matters.

A Financial Agreement gives you the security of knowing that if your relationship breaks down, the agreement sets out how your assets are divided and who is responsible for debts.

What type of Financial Agreement is best for us?

All Financial Agreements are now made under the Family Law Act, regardless of whether you are in a de facto relationship, engaged to be married or already married.

However, a pre-nuptial agreement only comes into effect once you are actually married - so if your

wedding is some time away and you are already a de facto couple, we recommend having a 'mirror agreement' to cover you for the period prior to your wedding. There is not a great cost involved in this and it provides greater security.

If your wedding is very close or you are already married, you might consider a financial agreement after marriage. It's the same as a pre-nup, but is signed after the wedding.

➤ FINANCIAL AGREEMENTS

Tom and Sally lived together for six years. When they began their relationship, Tom was 46 years of age and owned an expensive home, shares and had \$180,000.00 in superannuation whereas Sally had a car and \$10,000.00 in superannuation. Tom and Sally did not sign a Financial Agreement.

Tom and Sally separated. Sally claimed an interest in the home Tom owned before the relationship.

It took over 18 months and \$80,000.00 in legal fees for Tom to resolve the claim. If Tom and Sally had a Financial Agreement, they could have avoided the stress and cost - financially and emotionally - of litigation.

What are your first steps?

Naturally your first step is to consider your partner's feelings about this agreement. A Financial Agreement can sometimes promote marital harmony by avoiding disputes later about ownership of property because both you and your partner have already discussed this and are clear about what you want.

It is very important to seek legal advice to put the agreement into the appropriate form



so that both of you can be reassured that the agreement protects you in the future. The Financial Agreement will not be legally binding unless you have both had independent legal advice so, you and your partner cannot obtain all the advice you need about your agreement from the same solicitor.

When should I consider a Financial Agreement or pre-nuptial Agreement?

There are many circumstances when you should broach the subject of a Financial Agreement with your partner, such as:

- If you are a business owner and want to maintain control of the business in the event of separation;
- If you have significant assets;
- If you want to retain specific assets in the event of separation;
- If you want to provide for children as you wish;
- If you are giving up your career and want protection in the event of separation;
- If you have a family member who has special needs, such as a disabled child;
- If you want certainty about your financial position should you separate;
- If you are concerned about a large debt that one of you is bringing to the relationship.

What happens upon separation if I don't have a Financial Agreement?

If you are not married but have been in a **de facto relationship**, you or your former partner can apply to one of the Family Law Courts for an order for property settlement and/or spouse maintenance. Generally you have to have been in the de facto relationship for more than two years, have a child together, or one of you has made significant financial contributions to the property of the other. The law does not say that you have to actually live together in the same home for two years - there are other circumstances that the courts have found were de facto relationships.

If you are **married**, either of you can apply to one of the Family Law Courts for a property settlement and/or spousal maintenance.

Both courses of action, because they involve the Court, will involve financial and emotional cost.

But... if you have one of these agreements, then (except in unusual situations) no application for a property settlement (and in most cases, spousal maintenance) can be made... saving you and your partner the **cost and stress** associated with court proceedings.

If you are considering entering into an agreement, please refer to our website www.mckayslaw.com, telephone us on 1300 625 297 for more information and refer to the Financial Agreement Questionnaire at the end of this booklet.

Part C: Wills and Enduring Powers of Attorney

Don't leave it until it is too late

Many of us don't like to think about making a Will but we do need to consider what will happen to our family, spouses, de facto spouses and any other person who may be dependant upon us in the event of our death. We also need to consider

who may want to care for us and look after our finances in the event we lose the capacity to do so for ourselves. These issues become particularly important when you have commenced a de facto relationship or intend to, or have married.

This guide highlights some issues you may need to consider about Wills and Powers of Attorney. If you want more information contact us on 1300 625 297 to have the more detailed Client Guide to Wills and Powers of Attorney sent to you, or to make an appointment to see a Solicitor.

Why do I need a Will?

A Will is the last legal direction that a person can give, and is effective upon his or her death. A Will is an important device to ensure that your assets, upon your death, will be given to the people you want and for the purposes that you want... and to help financially support your loved ones.

What happens to my assets if I die without making a Will?

If you die without making a Will, your estate is distributed under the rules of intestacy. In effect, the Government decides how your estate is distributed. This distribution may not be what you wish! Therefore a properly drafted Will is important to ensure your family is properly supported and your wishes are given effect.

> WILLS

Jane had a Will which left her house to her children. When Jane subsequently married John, she assumed that her Will would still be valid and that if she died her house would pass to her children.

Jane died three years into the marriage, without having her Solicitor review her Will.

Jane's children are shocked to discover that the marriage revoked the Will and that they now have to fight John in court for a portion of their mother's estate.

If you don't have a Will there is no guarantee that what you intend to happen will happen. This can cause hardship to those closest to you, for example:

- > Your partner may not automatically be entitled to all of your estate;
- > Your partner may be forced to sell the family home or car so other beneficiaries can claim their share of the assets;
- > The safety net you put in place to protect your children's future and inheritance may be lost;
- > Someone you may not have chosen could be appointed guardian of your children;
- > Someone you do not wish to benefit could become a beneficiary (eg: if you are separated but not yet divorced your estranged wife/husband);
- > Your children could take control of their inheritance at 18 rather than a more mature age.

What happens to my Will if I get married or divorced?

Unless your Will is worded in a particular way, marriage after signing of a Will automatically revokes the Will. However, divorce does not automatically revoke the entire Will but does revoke any gift in it to the ex-spouse and any appointment of the ex-spouse as executor or trustee.

What is an Enduring Power of Attorney and do I need one?

By signing an Enduring Power of Attorney you may grant someone (your Attorney) the legal power for that person to sign or to take some action on your behalf. Sure a Will looks after your estate upon death, but in the fast paced world we live in, accidents, serious illness, long term physical or brain injuries are all too common. Can you really afford to be one of those people who think "it won't happen to me"?

Enduring Powers of Attorney are also handy in



other circumstances – for example you may be:

- Unable to sign documents yourself;
- Overseas and wish someone to have power to manage your affairs in your absence;
- Selling a house but be unavailable and want someone to sign transfer documents on your behalf;
- Become incapable and need someone to manage your affairs.

If you do not have an Enduring Power of Attorney then the Queensland Civil and Administrative Tribunal (QCAT) can appoint an administrator on your behalf and charge you a fee for doing so.

An Enduring Power of Attorney will give someone of your choice – your partner and/or trusted relative or friend – the power to act on your behalf, even if you lose capacity to act for yourself. The power ‘endures’ throughout the period of your incapacity.

What happens if I make an Enduring Power of Attorney, what happens if I subsequently marry?

If you marry, your Power of Attorney is revoked unless your new spouse is already your Attorney.

What happens if things go wrong in my relationship? Can I change my Will and Enduring Power of Attorney?

Once made, a Will can be revoked or changed at any time. If you wish to change it, we recommend

you see us... because a change incorrectly made can later have serious unintended, and costly, consequences.

You may also change or revoke a Power of Attorney at any time. As long as you have the capacity to make an Enduring Power of Attorney, you also have the capacity to change or revoke it.

What if I become incapacitated and do not have an Enduring Power of Attorney?

If you do not have an Enduring Power of Attorney and you become incapacitated then the Queensland Civil and Administrative Tribunal (QCAT) will appoint someone as your administrator – someone who you may not trust and may not want to act.

Although your administrator has a duty to act in your best interests, the decisions they make on your behalf may disadvantage those who are close to you. For example, your administrator may decide to sell your interest in the family home to pay for your living expenses and leave your spouse/partner and children without anywhere to live.

These problems happen all too often – don’t put your family through such stress and difficulty.

What is an Advance Health Directive?

If you become seriously ill, unconscious or incapable of communicating your health wishes, very important decisions may need to be made. It is important to ensure that your wishes are known in case you are in this situation.

An Advance Health Directive is a formal way of giving instructions about your choices for your future health care. It only comes into effect if you are unable to make your own decisions. Your Directive may provide your instructions for particular treatments you do or don’t want.

It also enables you to leave specific instructions about how particular illnesses should be treated, including life sustaining measures. For more information, you should speak to us or your family Doctor.

➤ ENDURING POWERS OF ATTORNEY (EPAS)

James and Mary had been married for ten years when James suffered a stroke and subsequent brain damage.

Although he and Mary had talked about arranging for Powers of Attorney documents to be drawn up, they had not done so.

Mary was devastated by James' injury and then had extreme difficulty trying to manage James' affairs.

Someone who did not know James and Mary was appointed to manage James' affairs. This would not have occurred if James and Mary had a Power of Attorney prepared by their solicitor.

Part D: Now we're a couple...What next?

You enter into a relationship with established financial arrangements, personal and professional contacts and a career. For some the transition raises the question whether you want to change your surname and how to do this. Another question that may arise is how to transfer the title and mortgage of any property into joint names... and whether that is a good idea.

Listed below are some of the most frequently asked questions and answers concerning changing your name, including on your passport and issues to consider when transferring the title of property into joint names.

I want to change my surname, where and when do I start?

If you decide to change your surname you should change your driver's licence first as you can do this using your marriage certificate and with very little hassle.

The marriage certificate is the key, but most authorities will need the official certificate you can obtain from the Registry of Births, Deaths and Marriages, not the ceremonial one you received on the day. Once you hold that in your hands, the name changing process is easy. If you are in a de facto relationship, you will need to change your name with a Change of Name Certificate through the Registry of Births, Deaths and Marriages.

Do I have to change my name?

You are not required to adopt your husband's surname upon marriage.

What about QLD Transport? Can't I do it by mail?

You will have to physically attend at Queensland Transport to change your licence. Take your original marriage certificate or Change of Name Certificate, together with your other identification cards (even though those other cards are in your previous name).

I am getting married soon. We will honeymoon out of the country. Do I need to change my passport?

If you intend to change your name to that of your new husband, you will have to wait until you get back from your honeymoon to change your passport as it takes some time. Therefore, you will still be using a passport in your maiden name when travelling on your honeymoon, so flights and



reservations must be booked using the name on your passport.

I have a house and mortgage in my name only. How do I change my name on the Title and Mortgage documents?

A request to change your name, along with your marriage certificate, will have to be filed with the 'Titles Office'. If you have a mortgage, your financial institution will also need to lodge a form of consent to the name change. There is no stamp duty payable but there may be bank fees. You will need to check this with your lending institution.

I own a property and I want to have my spouse's name listed jointly with mine on the certificate of title. What are the steps involved?

To transfer property into joint names, stamp duty needs to be assessed by the Office of State Revenue and then the Transfer must be lodged with the 'Titles Office'. At the conclusion of this process, you will be given a copy of the new Title with both names listed as the registered owner.

For further information contact us on 1300 625 297 to make an appointment.

> WILLS

Tom and Mary have three children. Tom did not make a Will because he assumed all his property would pass to Mary if he died.

Tom was killed in an accident and Mary discovers that, under Queensland law, she is only entitled to \$150,000.00, the household chattels and one third of the remainder.

The three children are entitled to the other two thirds of the remainder of the estate.

Part E: Questionnaire for Financial Agreements

You want to make a Pre-nuptial Agreement or other Financial Agreement but don't know where to start...

Instructions

To make the process as easy and as cost effective as possible we have developed a Financial Agreement Questionnaire for you to complete if you wish to have a Financial Agreement.

We recommend you complete this Questionnaire and bring it with you to your appointment to save you time and money associated with obtaining professional advice and assistance in relation to drafting your Agreement.

Please also make notes about any questions you may have as you go through the Questionnaire. If there is insufficient room, you may make notes in the margins or on a separate piece of paper. If you are uncertain about how to answer any question, just leave the answer blank.



➤ FINANCIAL AGREEMENTS

Fran is a partner in an engineering firm. Fran's business partner, Bob, has been through a divorce previously and had to sell his business as a result.

Fran and Bob always intended to enter into an agreement which would provide that Bob would not have any claim on or interest in the business if they separated.

In the frantic excitement of wedding preparations they forgot to organise a Pre-nuptial Agreement before the ceremony. Fran contacts her Solicitor with the concern that it is too late to create the agreement now that she is married.

She is relieved to learn that pre-nuptial type Financial Agreements can be entered into before or after the wedding actually takes place.

As part of a Financial Agreement, there would be an itemisation of the financial position of each party at the time of entering into the Agreement. You would list the assets, liabilities and financial resources of each party together with their values. You should also obtain documentary proof of the value of the assets, liabilities and financial resources.

The decisions you make about your financial arrangements are obviously very important issues.

Simply complete the Questionnaire, give us a call and tell our receptionist you wish to speak to one of our Family Law Solicitors about your Agreement. We will be only too happy to arrange a time to see you and personally discuss your specific requirements and provide you with an indication of the costs involved.

Personal details

Your details

Name

Address

Telephone

Email

Occupation

Date of Birth

Your partner's details

Name

Address

Telephone

Email

Occupation

Date of Birth

Relationship Details

When did you commence your relationship?

Do you intend to marry in the next twelve months?

Yes

No

Do you want a Pre-nuptial Agreement?

Yes

No

If yes, when is the possible marriage date?

Do you want an agreement that will cover you until the wedding

Yes

No

Existing Wills

Do you have an existing will?

Yes

No

If yes, where is it stored?

Assets and Liabilities

Detail your assets and liabilities – providing an indication of the value of each and the extent of any liability.

Home (address)

Value \$

Debt \$

Who is the owner?

(If joint ownership please indicate if it is owned as joint tenants or tenants in common (if known)).

Do you own any real estate investment?

Yes

No

Please describe details of the address/s, the nature of the property (ie beach house or investment purposes), the current value and the liabilities secured by mortgages.

Your details

Address

Value \$

Debt \$

In whose name is the property held?

If more than one, please indicate whether it is held as joint tenants or tenants in common.

Your partner's details

Address

Value \$

Debt \$

In whose name is the property held? If more than one, please indicate whether it is held as joint tenants or tenants in common.

Motor Vehicles

Do you or your partner own any motor vehicles and if so, what is the value and what debts are owing?

Your details

Motor vehicle (make, model, rego no.)

Value \$

Debt \$

Your partner's details

Motor vehicle (make, model, rego no.)

Value \$

Debt \$

Share Portfolio

Do you hold shares/units/options etc in companies listed on the stock exchange, in whose name are they held and what is their approximate value? Please indicate any debts that are owned in relation to the portfolio.

Your details

Address

Value \$

Debt \$

Your partner's details

Address

Value \$

Debt \$

Financial Investments

Do you have any investments with a bank, building society, credit union or other financial institution and in whose name are the investments? If joint ownership please indicate if it is owned as joint tenants or tenants in common (if known).

Your details

Address

Value \$

Debt \$

Your partner's details

Address

Value \$

Debt \$

Business

Do you own or have a share in a business?

You Yes No

Your partner Yes No

Do you have any interest in a partnership, joint venture, proprietary limited company, unit trust or other business structure that has not already been described above?

You Yes No

Your partner Yes No

If yes, describe the extent of the interest naming the person/s in whose name the property is, the value of the property and the liability attached to it.

Your details

Address

Value of trust assets \$

Debt owed by trust \$

Your partner's details

Address

Value of trust assets \$

Debt owed by trust \$

Overseas Property

Do you have any property overseas?

You Yes No

Your partner Yes No

If so, please describe what the property is and its value.

Your details

Address

Value \$

Debt \$

Your partner's details

Address

Value \$

Debt \$

Life Insurance

What life insurance policies do you have? Provide the name of the insurer, level of cover, name of the insured person and name of the person/s nominated on the policy as the owner/s.

You

Your partner

Superannuation and Employee Entitlements

Provide details of your superannuation fund (if any).

You

Your partner

If there is a life policy attached to the fund, provide details of the level of cover and whether any life policies mentioned above are actually owned by the trustee of the superannuation fund.

You

Your partner

Miscellaneous

What other assets or liabilities need to be taken into account?

You

Your partner

Do you control any assets that are not owned by you in your own right?

You

Your partner

Is there any other information you believe may be relevant for us to advise you properly about your Pre-nuptial Agreement/De Facto Agreement?

You



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