

Creevey Russell LAWYERS

excellence in law, service and communication

IS THE WRITTEN AND SIGNED AGREEMENT BETWEEN MY EX AND I SUFFICIENT?

Even if an agreement about a property settlement is written down and signed, unless certain steps are followed, the agreement will not be binding.

An agreement can be made binding in two ways:

1. filing for consent orders in the Family Court; or
2. signing a binding financial agreement ('BFA') which complies with the *Family Law Act 1975*.

A consent order is an enforceable Court order that is made after a joint application by the parties, and a BFA is a type of contract, which is made privately without applying to the Court. Each has its own benefits and disadvantages, but both are equally binding.

Even in simple situations where there aren't big sums of money involved (or even if there is only debt), it is important that a property settlement agreement is made binding.

So why is it so important? Arguably the biggest benefit of a binding agreement is that it will bring finality to property settlement matters.

One of the biggest risks with having only a non-binding agreement is that if either party doesn't follow it, the other person will have almost no rights to enforce it.

Read the full article on our website,
www.creeveyrussell.com.au

YOUR FAMILY LAWYERS



Clare Creevey
Principal



Dannielle Glaister
Lawyer

CONSIDERING YOUR CONTRIBUTIONS IN A FAMILY LAW PROPERTY SETTLEMENT

Considering each partner's contributions to the assets of a marriage or de facto relationship after separating is an important step of the family law property settlement process.

Contributions can be financial (such as income, or owning a property), non-financial (such as DIY renovations, or looking after the children), direct (made by a partner themselves) or indirect (for example, receiving a gift for the deposit to buy a house).

Assessing each partners' contributions will have an effect on the division of the property pool of the relationship and, in general terms, greater contributions can mean a greater entitlement.

However, the Family Law Courts have repeatedly emphasised that each matter must be decided based on its particular facts and circumstances.

This means that there is no mathematical formula for making an assessment of contributions to a relationship. It is a common misconception that you will 'take away what you put in' during the relationship (in terms of money or assets) – which is not necessarily the case.

That being said, there are general principles which can be seen in the cases decided by the Family Law Courts which provide guidance as to how contributions will be assessed, and how the property of a relationship will be divided.

Read the full article on the website,
www.creeveyrussell.com.au



“WE ACT FOR CLIENTS FROM ALL WALKS OF LIFE, AND WE KNOW HOW IMPORTANT IT IS TO PROVIDE A FULL RANGE OF SERVICES”

WHO GETS THE PET?

We adore our pets and often they are considered to be a part of the family.

So when a relationship ends, who 'gets the pet' can be a very important consideration.

If you agree about who gets the pet after separating

In a lot of cases, this issue can be resolved amicably and the parties can agree who will keep the pet, or sometimes parties will agree to 'share custody' or arrange regular visits with the pet.

Due to the time, money and stress that can be involved in going to court, it is best to try to reach an agreement about your pets either through direct negotiation, or through family dispute resolution services (such as a mediation).

If you can't agree about who gets the pet

In some cases for a variety of reasons the parties just can't reach an agreement about who gets to keep the pet, so they will need to make an application for the Family Law Courts to determine the matter.

All family law disputes are dealt with under the *Family Law Act 1975* (Cth) (the 'Act').

As much as people may consider their pets to be a part of the family, the Act does not make any reference to pets or animals. The current legal position is that pets are categorised as 'chattels' – which simply means property.

So, if you need to ask the Family Law Courts to make orders in relation to pets, these orders will be made as part of a property settlement.

Whilst the Family Law Courts have the power to determine who can keep the pet, the Court does not make orders about 'sharing custody' or allowing 'visitation' of a pet. Despite being classed as property, pets are also generally not regarded as having a monetary value (unless there is a particular reason, for example for a pedigree dog).

In deciding who will keep the pet, in previous cases the Family Law Courts have considered things such as:

- who has possession of the pet
- who has cared for the pet (such as feeding, walking, washing etc.)
- who purchased the pet and whether one person had the pet before the relationship started
- whether the children (when applicable) have a particular attachment to the pet
- who pays the vet and food bills, and whether the party has capacity to care for the pet and a suitable place for the pet to live.

The Family Law Courts have a wide discretion under the Act and can take into account any factors they deem fit.

Can we record our agreement about who would get the pet if we separate?

Because of the classification of pets as property, one measure which can be taken to prevent any future dispute about 'who gets the pet' is to enter in to

a binding financial agreement ('BFA'). The BFA can cover a range of financial matters, or can just deal with the pets – this is completely up to the parties.

A BFA can be made by parties to a de facto relationship or a marriage either before living together or getting married, at any time during the relationship, or after separation or divorce.

Should the laws about pets be changed?

There has also been debate about whether the law surrounding pets should be changed. Some animal rights activists argue that the treatment of animals as property is inappropriate given that pets have awareness and experience complex emotions.

In some jurisdictions overseas, the courts have adopted a 'best interest' test when deciding who gets the pet – meaning that they consider what is in the pet's best interest. The 'best interest' test is the test used in Australia when deciding children's matters. Despite some push for them to do so, Australian courts have been opposed to changing the treatment of pets under family law.



COMPASSIONATE PERSONAL LAW SERVICES

WE KNOW HOW IMPORTANT IT IS TO PROVIDE A FULL RANGE OF SERVICES THAT ATTEND TO THE UNIQUE LEGAL NEEDS & PERSONAL CIRCUMSTANCES OF EACH INDIVIDUAL.

OUR OFFICES

BRISBANE | Level 24, 300 Queen Street | PO Box 10091 Brisbane QLD 4000 | +61 7 3009 6555

TOOWOOMBA | 1/1B Kitchener Street, PO BOX 833 Toowoomba QLD 4350 | +61 7 4617 8777

ROMA | 42B Wyndham Street, Roma QLD 4455 | +61 7 4622 7925