

Goodman Lawyers

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Management Rights, Estates and Binding Financial Agreements

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3. **BINDING FINANCIAL AGREEMENTS**



3.1 Types of Binding Financial Agreements

Three Types:

- S 90B – before marriage
- S 90C – during marriage
- S 90D – after marriage, Divorce Order made

Have to meet the specific criteria for the type of agreement you are signing



3.2 Contents of Binding Financial Agreement

Under Section 90B, 90C or 90D

What can be included:

- Finance
- Property
- Spousal maintenance

What can't be included:

- Maintenance for third party
- Child support



3.3 Why is it important to have one?

Without a BFA, the Court can make orders for:

- Payment of spousal maintenance (s72)
- Apportionment of the Parties' finances (s78, s79)
- Transfer of property (or alter Parties' interest in property) (s80)

A BFA will be **binding** on the Parties and prevent the Court from making the above orders.



3.4 Legal requirements

- Written and signed by both parties (s90G(1)(a))
- Independent Legal Advice and Signed Statement from lawyers (s90G(1)(b),(c) and (d))
- Full and honest disclosure of respective financial position by both parties (s 90K(1)(a)).



3.5 What can go wrong?

Courts can set aside BFAs where:

- Agreement obtained by fraud (s 90K(1)(a))
- Agreement void, voidable or unenforceable (e.g. where binding requirements not fulfilled or uncertainty in terms) (s 90K(1)(b)(c))
- Impracticable for agreement to be carried out
- Material change in circumstances relating to care of a child of the marriage (s 90K(1)(d))
- A party engaged in unconscionable conduct in the process of developing BFA – e.g. forcing a party to sign on the wedding day. (s 90K(1)(e))

