Celebrating Pride: The Essential Guide to Binding Financial Agreements for LGBTQIA+ Relationships

written by SRFL Team | 9 July 2024



We've come far as a nation since that momentous day in 2017 when Australia said YES to legalising queer marriages. What a victory it was for the LGBTQIA+ community and such a powerful statement of acceptance and equality. Since then, thousands of queer couples have embraced the opportunity to formalise their relationships. Some key marriage figures show that in 2022 alone, there were over four and half thousand same-sex marriages in Australia[1].

Actor and film producer Elliot Page wrote in their critically acclaimed memoir,

Pageboy: "Someone will break your heart, and you will break one too."

Love is love... until it's not

Love is love… until it's not. Unfortunately, not all relationships or marriages have a "happy-ever-after" ending. According to the Australian Bureau of Statistics, the 2022 divorce rate for same-sex marriages was similar to that of heterosexual marriages,[1] and it is believed de facto queer relationships mirror this trend. At SR Family Law, we've experienced it firsthand too, with more and more LGBTQIA+ people seeking our help following their relationship breakdowns.

As we recently celebrated Pride Month this past June, it is an opportune time to reflect on the progress made since the 2017 referendum and to consider the practical steps necessary to protect these cherished relationships going forward. One critical step is by understanding and investing in a Binding Financial Agreement (BFA).

BFAs – The What, the Why and the How:

The What?

A Binding Financial Agreement legally outlines how assets, liabilities and financial resources will be divided in the event of a relationship breakdown. BFAs can be signed before, during, or after a relationship and provide couples with the flexibility to manage their financial affairs according to their unique circumstances. These agreements are recognised under the Family Law Act 1975 and apply to both married and de facto relationships, including queer couples.

The Why?

There are several reasons why it is a good idea to get a BFA when in a queer relationship. This includes (but is not limited to) legal protection, financial security, avoiding lengthy, expensive disputes and flexibility and control.

- Legal protection and clarity:

Despite significant advancements in legal recognition, queer couples still face unique challenges that can complicate financial matters. A BFA provides clear, legally binding terms that protect both partners' interests. This clarity is crucial in avoiding disputes and ensuring that both parties are treated fairly under the law.

- Financial security:

BFAs allow couples to protect pre-existing assets, future inheritances, and financial contributions made during the relationship. For individuals who enter a relationship with significant assets or anticipate receiving substantial inheritances, a BFA ensures that these assets remain protected.

- Avoiding court disputes

One of the most significant benefits of a BFA is the ability to avoid costly and emotionally taxing court disputes. By clearly outlining how assets and liabilities will be divided, BFAs can lead to more amicable separations and reduce the strain on both partners.

- Flexibility and control:

BFAs offer couples the flexibility to tailor the agreement to their specific needs and circumstances. This includes provisions for future changes, such as significant life events or financial shifts, ensuring that the agreement remains fair and applicable over time.

The How?

Binding Financial Agreements can cover various financial matters such as property division, spousal maintenance and other financial resources. Independent legal advice is a crucial step to ensure the BFA is robust, enforceable and effectively protects an individual's financial interests.

Here are crucial factors to keep in mind when considering getting a BFA:

- Full Financial Disclosure:

One of the critical aspects of a strong BFA is full and frank disclosure of each party's financial circumstances. Transparency minimises the risk of future disputes and ensures that both parties are fully informed when entering the agreement.

- Independent Legal Advice:

Both parties must receive independent legal advice to understand their rights and the implications of the BFA fully. This advice ensures that the agreement is fair and reasonable, providing additional protection against potential legal challenges. Each party's lawyer will confirm in writing that they have provided this advice, which is a requirement for the agreement to be binding.

- Fairness and Reasonableness:

A BFA should be fair and reasonable to both parties. Agreements that are heavily skewed in favour of one party are more likely to face challenges. Crafting a balanced agreement that considers the future needs and contributions of both partners enhances its stability.

- Regular Reviews and Updates:

Circumstances change, and so might the relevance of a BFA. Regularly reviewing and updating the agreement considering new life events, such as the birth of a child or significant changes in financial status, ensures that the BFA remains fair and applicable.

"We deserve to experience love fully, equally, without shame and without compromise."
– **Elliot Page**

As we reflect on Pride Month just past, the team at SR Family Law believes it is essential to continue taking proactive steps to protect queer relationships. We strongly recommend investing in a Binding Financial Agreement as it is not just a legal necessity but provides peace of mind needed to navigate the complexities of life together.

We have made every effort to use gender-inclusive language and terms that respect the diverse identities and relationships within the LGBTQIA+ community. However, we recognise that language is constantly evolving, and some terms may inadvertently cause offense. If any terms used in this article are incorrect or have caused unintended harm, please know that it was never our intention to be disrespectful. We welcome any feedback or suggestions to improve the inclusivity and accuracy of our language. Thank you for your understanding and for helping to create a more inclusive dialogue.

Free initial consultation: Contact us to discuss your personal situation.

We hope you have found this information to be of use in giving you an understanding of our firm and the work we do specifically in relation to Family Law and matters related to Family Law. We know that every family law matter is unique, and your personal circumstances require you to receive personalised legal advice that considers your specific needs, objectives, and circumstances. We strongly encourage you to contact our office to talk to us about your personal circumstances and how this information specifically applies to your situation. We welcome you to get in touch with us to book a free initial consultation with our team.

We are a boutique legal firm focused on family law. Our team has a depth of experience and expertise that cannot be matched by legal practices that work across numerous areas of law.
Wherever you are in the separation process, our team can assist you. Book your free initial consultation with one of our family lawyers today, phone during office hours on 07 56 466 466 or book online via our meeting calendar here.