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## FAMILY LAW EDITION

# Property Settlements in Family Law

Jenny and Dale have been married for 8 years and have decided to separate. They still get on well and have decided how they intend to divide the property between each other. Jenny and Dale want to avoid going to Court and now seek legal advice on how to formalise their agreement.

Property settlements between married (and de facto relationships) can be formalised by one of two ways:

### 1. Consent Orders

Consent Orders are orders agreed upon by the parties, and approved by the Family Court. They can be made in relation to parenting issues and/or property issues. Once Consent Orders have been made, they have the same legal force as Orders made by a judge at a Court hearing.

### 2. Binding Financial Agreement

A Binding Financial Agreement (BFA) is a private contract which is entered into by the parties. Unlike Consent Orders, a Binding Financial Agreement does not go to Court and does not need the Court's approval. Therefore parties are given greater flexibility in composing family law settlements. A Binding Financial Agreement is a contract and each party is required to obtain independent legal advice prior to signing.



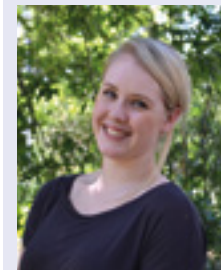
## Words to the Wise

**“Love is what's in the room with you at Christmas if you stop opening presents and listen.”**

Bobby, Age 7

## Welcome

We would like to welcome Vanessa Munnecke to the Hutchinson Legal Team. Vanessa graduated from La Trobe University in 2014 with a Bachelor of Laws and a Bachelor of Business. She was admitted to practice in August 2015 and joins the Hutchinson Legal team concentrating on Property Law and Litigation.



## Hutchinson Legal's Family Law Team



**Grant Hutchinson**



**Simon Clinch**



**Jaclyn Tang**

For further information, please contact our Family Law team on 9870 9870.

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## Did you know...

If you work in the city, our Melbourne office is ideally positioned to meet your legal needs. For a convenient lunch time appointment or consultation, give us a call.

If you would like to receive an electronic version of Legal Insight, please:

- send an email to [office@hutchinsonlegal.com.au](mailto:office@hutchinsonlegal.com.au)
- call Tristan Tottenham of our office on **9870 9870**
- write to us at PO Box 450, Ringwood 3134



## What to do when a parent won't return a child

Stephen and Melissa separated over a year ago and agreed to share the custody of their 3 children. The children live with Melissa and spend time with Stephen every second weekend. Last weekend Stephen refused to return the children. He advised Melissa that he now wants to have the children full time and that they can spend time with Melissa on alternate weekends. What can Melissa do?

Unfortunately without a Court Order the police are unable to intervene and the Department of Human Services cannot act unless there is a risk of child abuse. It is therefore important that Melissa seeks legal advice as soon as possible.

Typically, before parties initiate legal proceedings, they are required to participate in compulsory mediation unless they fall under one of the exceptions. If the mediation is unsuccessful then the mediator will issue the parties with a section 60I certificate. This certificate is the parties golden ticket to enter into the legal system.

However in instances such as the above, Melissa may be able to file a Recovery Application seeking the Court to make an Order forcing Stephen to return the children. This Application can be made without the need for a certificate if Melissa can prove that the matter is urgent.

## Can I protect my assets prior to marriage?

Tony has just become engaged and plans on getting married later in the year. He has a successful business that he has developed over many years. This is Tony's second marriage and he is concerned about what will happen if the marriage fails. Can Tony do anything to protect his business?

Under Australian law, couples who are either married, going to marry (or a de facto relationship) have the right to enter into a Binding Financial Agreement. A Binding Financial Agreement operates in the same way as a prenuptial Agreement.

In this case, Tony and his fiancée could enter into a Binding Financial Agreement which could exclude his business from the matrimonial asset pool. By excluding the business from the pool it would mean that if Tony's marriage does not work out then his future wife will have no entitlement over his business.

Binding Financial Agreements don't go to Court so the parties have great flexibility about what arrangements they want to enter into. However like Binding Financial Agreements which are made after separation, the parties are required to obtain independent legal advice prior to signing the agreement.

## Christmas Message

Despite the troubles and tragedies of this world, we need to keep giving our children reasons to hope for a better future. Our world needs now more than ever the peace and goodwill to all which is celebrated at Christmas. Please spare a thought and pray for our children, that their hope and optimism will continue to grow. From all the team at Hutchinson Legal, we trust you have a peaceful Christmas and a hopeful New Year.



If you haven't picked up your **2016 Optimism of Youth** calendar yet, please give Tristan a call on 9870 9870 and he'll set one aside for you to collect from our office!

*Con. Nottas*  



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## FastFACTS

**48,000**

**Average number of married couples that divorce per year in Australia**

**12.1 years**

**Average length of marriages that end in divorce in Australia**

**25,272**

**The largest group of carol singers, gathered in Nigeria in 2014**

**70 million**

**Average number of Christmas cards sent by Australians per year**

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