

Risk management strategies for financial agreements

Preparing financial agreements

- Don't dabble.
- Don't act for both parties.
- Confirm in writing who you are and are not acting for.
- Explain carefully to your client:
 - the importance of disclosure
 - the importance of valuations
 - the circumstances in which agreements will not be binding especially:
 - material change to circumstances
 - unconscionability
 - the risks of insisting on signing up close to the wedding date.
- Make file notes of your meetings or discussions with the client and ensure you include:
 - who was present
 - the duration of the meeting
 - a summary of your client's instructions and your advice to the client.
- Confirm your advice to your client in writing.
- Ensure the wording of the agreement and certificate reflects the requirements in section 90G of the *Family Law Act 1975* (Cwlth) (FLA).
- Carefully check the agreement to ensure it complies with all of the client's instructions, in particular review the schedules and road test any formula. Where possible have someone else in your office (with 'fresh eyes') review the agreement.
- Keep a copy of the financial agreement and your file indefinitely.



Certifying financial agreements

- Don't dabble.
- Open a file if you did not draft the agreement.
- Have a face to face meeting with your client on their own to discuss the agreement.
- Provide comprehensive advice to your client including:
 - give your client a clear statement about forgoing rights in the future by signing the agreement
 - advise your client of the advantages and disadvantages of entering into the agreement
 - where the agreement is manifestly unfair for your client, advise her or him not to enter into the agreement
 - advise your client of the importance of valuations.
- Advise your client about any amendments to the agreement made after your initial advice and how those amendments impact on your earlier advice.
- Make file notes of your meetings or discussions with the client and ensure you include:
 - who was present
 - the duration of the meeting
 - a summary of your client's instructions and your advice to the client.
- Confirm your advice to your client in writing.
- Insist on your client obtaining independent financial advice.
- Obtain written acknowledgment from your client that they understood your explanation.
- Ensure the wording of the agreement and certificate reflects the requirements in section 90G of the FLA.
- Keep a copy of the financial agreement and your file indefinitely.
- Charge an appropriate fee for the work required.