



Family Matters

THE NEWSLETTER OF BERRY FAMILY LAW: SPRING 2018

Introducing you to Sanaz Naimi Roshan



Sanaz joined Berry Family Law in January 2012, having been admitted on 5 August 2002. Prior to practising family law she worked in a general practice which equipped her for the challenges of a family law practice and she has practised exclusively in family law since 2004.

Sanaz is an Accredited Family Law Specialist and she has a particular interest in complex property matters and parenting matters. She has a strong commercial focus and the ability to work closely with clients to achieve a prompt division of property between couples in the most financially effective manner. She works closely with accountants and financial planners to achieve commercial results.

Sanaz is passionate about helping couples resolve parenting matters to achieve what is in their children's best interest.

Sanaz presents and publishes articles on family law topics for various professional groups including accountants, psychologists and financial advisors.

Sanaz is a member of the Law Institute of Victoria and the Law Council of Australia.



Berry Family Law

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Asset Protection - Financial Agreements (pre nuptial agreements and cohabitation agreements)

When you buy a new home you don't expect it to burn down but you know this is a risk. So you take out insurance to protect yourself – just in case. Similarly when you enter into a relationship you intend it to be lasting. But we know that despite everyone's best intentions many relationships founder. A separation may occur because of something beyond your control. An increasing number of couples take out "insurance" in the form of a Financial Agreement to protect themselves – just in case.

A Financial Agreement is a private contract under the Family Law Act which provides how assets, liabilities and superannuation will be divided if you separate and whether any maintenance will be paid by you or your partner.

Many people refer to Financial Agreements as "pre-nups" or "pre-nuptial agreements" or sometimes Binding Financial Agreements.

Financial Agreements can be prepared before you marry or start living with your partner. They can also be done while you and your partner are together.

If you plan to marry or start living with your partner it might be helpful to consider how your property would be divided if you separate at some time in the future. We can help you in your discussions and assist you to reach an agreement about these issues. We will give you detailed advice so that you fully understand the legal implications of an agreement.

Once you reach an agreement we can formalize it as a Financial Agreement. There are strict requirements for Financial Agreements to be legally binding. We are very experienced in negotiating and preparing Financial Agreements to the highest standard. You benefit from our experience by getting the best protection.

Badly drawn Financial Agreements may be set aside by the Family Court. We are proud that none of the Financial Agreements we have drawn have been set aside. Conversely we have succeeded in having several badly drawn Financial Agreements set aside.

Many people are using Financial Agreements to protect their assets and to avoid costly and stressful disputes if they separate.

How do you determine what a Property Settlement should be?

Contrary to urban myths there is no presumption that property should be divided 50/50, 60/40 or in any arbitrary proportion. The Family Law Act sets out the factors which must be taken into account when a Judge has to consider how property is to be divided.

The Family Law Act 1975 sets out the general principles the court must consider when deciding financial disputes after the breakdown of a marriage or a de facto relationship. There is no universal formula to apply as a property settlement is based on discretionary criteria. Beware of advice received from well meaning friends or family as a result of their own experience. Each person's situation is unique.

The factors which the Family Law Act specifies must be taken into account are as follows:

- Whether any proposed property settlement is fair and equitable in the circumstances, and if so:-
- The current value of the property concerned and the extent of any liabilities
- The direct financial contributions by each party - the assets and savings owned at the commencement of the relationship
- The indirect financial contributions by each party - gifts and inheritances

- The non-financial contributions to the marriage or defacto relationship - caring for children, being the homemaker and maintaining or improving the property
- Future needs in relation to age, health, financial resources, care of children and income earning capacity

The way your assets and debts will be shared between you will depend on the individual circumstances of your case. Your settlement will most likely be different from others you have heard about.

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