

UNDERSTANDING CHILD SUPPORT AGREEMENTS

June, 2009

The Child Support legislation was comprehensively changed on 1 July 2008 (for more information see our Family Flyer edition 71). Not only did it result in the introduction of a new formula but also the introduction of new forms for documenting Child Support Agreements. There are now 2 options, either a Limited Agreement or a Binding Agreement.

WHAT IS THE DIFFERENCE BETWEEN BINDING AND LIMITED CHILD SUPPORT AGREEMENTS?

Both Limited and Binding Child Support Agreements allow parents to agree to their Child Support arrangements, in writing, and lodge those agreements with the Child Support Agency. We suggest that whether you are entering into a Limited or a Binding Child Support Agreement, it is important that you obtain independent legal advice from a Specialist Family Law firm prior to signing the Agreement.

Limited Child Support Agreements are required to be in writing, signed by both parties and lodged with the Child Support Agency. You are not required to seek legal advice prior to entering into a Limited Child Support Agreement and the amount payable under the Agreement must be equal to or greater than the amount assessed in the current Child Support assessment.

Binding Child Support Agreements are required to be in writing, and lodged with the Child Support Agency. Unlike Limited Agreements, in Binding Agreements both parties are required to seek independent legal advice, attach a certificate signed by a solicitor and the Agreement can be for any amount (including less than the amount assessed in the current Child Support assessment).

Other differences between Limited and Binding Child Support Agreements arise when one or both parties want to change the agreement.

HOW DO YOU CHANGE A LIMITED CHILD SUPPORT AGREEMENT?

1. The parents agree to end the agreement, either in writing or entering into a new Limited (or Binding) Child Support Agreement;
2. If both parties do not agree to terminate the Agreement, either party can apply to the Court for an Order to terminate the Agreement. However, you should seek legal advice prior to commencing proceedings and in particular, be aware there are only very limited circumstances in which such an Order will be made;
3. If at any time the amount payable under the normal Child Support formula assessment changes by 15% from the previous assessment, in circumstances which were not foreseen by the agreement, either party can ask the Child Support Agency to end the agreement (however, be aware that time limits apply); or
4. If the Agreement is over 3 years old, either party can give written notice to the Child Support Agency to end the Agreement.

HOW DO YOU CHANGE A BINDING CHILD SUPPORT AGREEMENT?

1. The parents agree to end the Agreement by entering into a Termination Agreement or a new Child Support Agreement. To do so, both parties will need to obtain independent legal advice; or
2. If both parties do not agree to terminate the Agreement, either party can apply to the Court for an Order to terminate the Agreement. However, you should seek legal advice prior to commencing proceedings in particular, be aware there are only very limited circumstances in which such an Order will be made.