

DO I NEED A DOCUMENTED AGREEMENT?

24 June 2019

To document or not to document an agreement? That is the question.

It is important to be aware of the options available when it comes to – whether? and if so, how? – to document children's arrangements, property settlement, and even child support.

The 'rule of thumb' is that a 'property settlement' must be documented, however, whether to document a 'parenting arrangement' should depend on the circumstances of the situation.

To help you find your way through, here are some of the options you should consider:

Property

It is important that when you settle property, a written agreement is made. This can be either in the form of a [Financial Agreement](#) or a [Consent Order](#). A Financial Agreement is not filed with the court, so each party needs to get independent legal advice, these agreements are very difficult to set aside. A consent order however, is filed with the court. Both types of documents are legally binding and have the added benefit of providing an exemption for stamp duty (i.e. nil) for any transfers of property made pursuant to the documented agreement.

Children

Unlike property, deciding whether to document children's arrangements should really be considered on a case by case basis as it really depends on the specific situation and circumstances. If the parties can cooperate effectively and there are no disputes over when each parent should care for the children, then often an agreement is not needed to 'lock in' dates and times. If, however, arrangements encounter difficulties then an agreement can either be documented by way of a [Parenting Plan](#) or a [Consent Order](#).

A Parenting Plan has no specific form and is not legally binding. It generally details the arrangements the parents wish to make, with signatures from both parents on the plan. A word of warning – while it is not legally binding, if a dispute arises and it is taken to court, the court can use the plan as evidence of the parties' intention.

A Consent Order is filed with the court and is legally binding, which means there can be consequences if it is contravened. It is important to remember that although a Parenting Plan is not legally binding, if it is made after a Court Order, then where it conflicts, it will override it.

Child Support

The Child Support Agency only provides for two types of agreements, a Limited or Binding Agreement, each of which have different conditions. The Limited Agreement can only be entered into if there is already an Agency assessment in place and the child support amount being paid is equal to, or more than, the assessment – it also only lasts for 3 years. A Binding Agreement can be entered into if there is no assessment but both parties must seek independent legal advice before entering into the agreement.