

Deeds vs Agreements for Settlement

Which one and why?

Key points

Both deeds and agreements are used to record the terms of a settlement and impose legally binding obligations on parties. In this article we explore some of the key differences between deeds and agreements.

Key differences

Some of the key differences between deeds and agreements include:

- An agreement requires some form of consideration to be valid. A deed, however, does not require consideration.
- Agreements are more flexible in form, and can be construed from multiple documents, while a deed must be in writing, signed and witnessed, with some written indication that it is intended to be a deed.
- Actions for breach of an agreement must be brought within six years of the agreement, whereas actions for breach of a deed may be brought within 12 years.
- A deed must be witnessed by a third party to be valid, whilst an agreement does not.
- Deeds will become enforceable as deeds once they are delivered to the other party (hence the catchphrase “signed, sealed and delivered”), whilst agreements must only be executed by both parties to be enforceable.

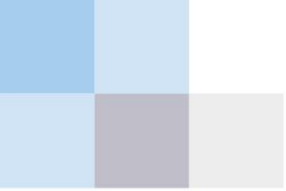
When they should be used

Most cases resolve by consent following negotiation or alternative dispute resolution.

Resolving claims and litigation by deeds or agreements is generally preferred over judgment. This is because confidentiality can be maintained in both deeds and agreements. Judgments on the other hand are public unless specific orders are made to the contrary. The existence of a judgment against a person or entity can have significant repercussions, including, for example, the ability to obtain finance.

A deed may be preferable where there is no consideration passing between the parties, or where either party requires a longer limitation period for claims of breach.

An agreement is a more flexible way of finalising disputes. It may be preferred where the company director of one or more parties is not empowered to enter in to deeds, or is otherwise



not available to execute the agreement. An agreement can be executed by an agent on behalf of a party, such as its lawyer.

Above is very brief overview of some of the key differences between agreements and deeds. It is important to consider all factors in any given matter before deciding whether to proceed with either a settlement deed or agreement.

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