

De Facto - De Facto Relationships

As of 1 March 2009, all matters relating to property settlement and maintenance of de facto partners are now governed by the provisions of the *Family Law Act 1975* ("The Act"); this is the same legislation that governs couples who are married. If you and your partner were living in a de facto relationship (including same sex relationships) and separated after 1 March 2009 The Act applies to you. If you separated prior to 1 March 2009 you may be able to "opt-in" to this legislation if you and your former partner agree. You will still need advice before doing this.

The Act applies to de facto couples whose de facto relationship has a geographical connection with either QLD, NSW, Vic, Tas, The ACT, NT, Norfolk Island, The Cocos (Keeling) Islands, or South Australia (from 1 July 2010).

To determine whether or not you are in a de facto relationship, the Court takes the following into consideration:

The Act defines a "de facto relationship" as existing between two (2) people¹ who live together on a genuine domestic basis. The same legislative provisions apply to same sex couples.

The Act takes into account a number of circumstances in determining what constitutes a couple living together on a "genuine domestic basis", including but not limited to such factors as how long the parties have been living together, any financial dependence, joint asset ownership, mutual commitment, sexual relations. There are also other factors, which is why it is important to obtain advice from a Family Law solicitor to ascertain if your relationship would fall within the definition as provided for by the Act.

The Act does not apply to all de facto relationships. For the Court to have jurisdiction to determine a parties' entitlements to a property settlement the Court must be satisfied of the following:

1. That the period, or total of the periods of the de facto relationship is at least 2 years; or
2. That there is a child of the de facto relationship; or
3. That:
 - i. The party to the de facto relationship who applies for the Order or declaration made substantial contributions to the relationship; and
 - ii. A failure to make the Order of declaration would result in serious injustice to the applicant; or
4. That the relationship is or was registered under a prescribed law of a State or Territory.

In determining the division of assets between a separating de facto couple, the Court adopts the following four-step process:-

1. Identifies the value of assets and liabilities (inclusive of superannuation)²;
2. Assesses the parties' respective contributions to the acquisition, conservation and improvement to the asset pool³;
3. The future needs of each party (age, income discrepancy, health, who has the primary care of the child(ren) etc.); and
4. Any Order made has to be just and equitable.

¹ Who are not legally married to each other or related by family.

² The Court does not just look at the assets and liabilities as at the date of separation.

³ Contributions can be both financial and non-financial and direct and in-direct.

It is important to note that if a party believes they have a claim, they must commence proceedings within two (2) years of the breakdown of the relationship, as otherwise they may be statute barred from commencing Court proceedings in the future.

An agreement reached to finalise property settlement should be formalised by way of either Consent Orders (which are approved by a Registrar of the Family Court) and/or a de facto couple may consider entering into a Binding Financial Agreement which deals with the manner in which their assets/liabilities are dealt with in the event they separate and can also deal with maintenance.

If you think that you are in a de facto relationship or you are unsure, and wish to seek advice about your rights upon separation, contact us for expert advice on your unique situation. No matter how straightforward or complex your situation may be, it is imperative to speak to a family law expert about what is best for you and any children involved.

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