



De Facto Relationships



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Changes to Laws relating to De Facto Relationships

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On 1 March 2009 the laws relating to De Facto Relationship couples were changed so that the de facto relationship couples separating after 1 March 2009 are no longer dealt with by the State Courts but rather they are now dealt with under Commonwealth Legislation, being the Family Law Act and such matters are now being heard by the Federal Courts, namely the Family Court of Australia and the Federal Magistrates Court of Australia.

This is good news for many people in De Facto Relationships as their matters will now be dealt with in a similar manner to those of married couples.

What is a De Facto Relationship?

A de facto relationship will exist where parties have a relationship as a couple living together on a genuine domestic basis and are not legally married to each other or related.

This is a wide definition and means that a de facto relationship can exist:-

- Between two persons of different sexes- such as a man and a woman;
- Between two persons of the same sex- so gay couples;
- Where one person is legally married to someone else or is in another de facto relationship.

This means that the legislation will apply for example where someone is married and they are also having a de facto relationship with another person who could be a person of either sex. So it covers a variety of situations.

How To Determine Whether a De Facto Relationship Exists

It is not uncommon for one party to assert that they are in a de facto relationship and for the other party to deny such relationship.

To determine whether a de facto relationship exists the court will look to a number of criteria, including:

- The duration of the relationship
- Whether a sexual relationship exists
- The reputation and public assets of the relationship-such as if the parties go out together as a couple etc.

Time Limits

The most common question we are asked is “How long do I have to live with someone before the De Facto laws apply?”

The answer to that question is this:-

The Court can only make Orders in relation to property proceedings in respect to a de facto couple where:-

- The period or the total of the periods of the de facto relationship is at least two (2) years. Therefore, if you have been living with someone and there have been periods of separation-as long as the total period adds up to two (2) years then the laws will apply; **OR**
- There is a child of the de facto relationship – therefore, the laws will apply even if the parties to the relationship have not lived together for two (2) years if they have had a child together; **OR**
- The party substantially contributed to any property and a failure to make an order would cause a serious injustice – therefore, if a party has made a substantial financial contribution or otherwise to some of the property of the other party then the laws may apply.

You will note that the length of time the relationship is not the sole criteria and the de facto laws may still apply even where the parties have not lived together for that two (2) year period.

Financial Matters Relating to De Facto Relationships?

If a de facto relationship exists and the parties have lived together for at least two (2) years (or had a child etc) then what can the Court do in relation to the assets of the de facto relationship couple?

After the breakdown of a de facto relationship, the court may make such order as it considers appropriate.

This is a wide term but it includes:

- Altering the party's interest in property - For example: If property is registered only in one party's name the court can make an order that the property be transferred to the other or be sold etc to ensure the other party receives their share in that property.
- Spousal Maintenance Orders;
- Splitting of Superannuation interest – For example, part of one party's superannuation interest may be transferred to the other party;

Time Limits for Bringing an Application

An application can only be brought in a de facto matter with respect to issues involving property if the application is made within two (2) years after the end of the de facto relationship.

If a party wishes to bring an application after this two (2) year period that party must seek the court's consent to bring the application. That consent may be given if the court is satisfied hardship will be caused to the party.

Attwood Marshall can assist you in relation to all of the issues arising from De Facto Relationships, including providing advice, preparing financial agreements or consent Orders and bringing applications before the Court.

Readers are reminded that the purpose of this article is to provide general information only and is not to be taken as a substitute for independent legal advice.

For further information please our Family Law Department Manager Lesley Barnes on (07) 5506 8241 or by email lbarnes@attwoodmarshall.com.au.

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