



Family matters

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De facto Regime

On 1 March 2009, the Federal Government amendments relating to De facto relationships commenced. How does it affect you?

These amendments bring de facto property settlements onto equal footing with matrimonial settlements. All matters are now covered by the Family Law Act 1975.

This means sweeping changes to the manner in which de facto property settlements are litigated and resolved, but also to what constitutes 'property' for de facto couples. This brings to an end the previous, Queensland-based regime under the Property Law Act 1974.

A de facto relationship, is defined in the act as a cohabiting relationship that exists for a period of at least 2 years (or where the parties have a child). Proceedings must be commenced within 2 years of the date of separation (leave may be sought by the Court to bring proceedings later than this, but only in extraordinary circumstances).

The Court will look into the circumstances surrounding the relationship to determine the actual commencement of cohabitation and the date of separation.

Under the previous legislation, de facto spouses were not entitled to utilise the Family Court or Federal Magistrates Court with respect to their property disputes, even if they were also disputing parenting arrangements. This led to a very difficult situation where separating de facto spouses

could find themselves litigating property matters in either the Supreme Court of Queensland, and contemporaneously litigating parenting matters before the Family Court. This anomaly has now been removed and de facto spouses will be litigating all matters before the Family Court.

Formerly separating de facto spouses were not entitled to include superannuation interests as assets in their property settlements. This is because the legislation that allows for superannuation splits, referred only to 'matrimonial' matters and that definition did not encompass de facto relationships.

However, now that de facto couples are equal with married spouses in the family law arena, both parties' superannuation interests will be included in the pool of assets available for distribution between the parties. Your superannuation interests could become subject to a payment flag or splitting order.

However, there are ways to protect yourself both now and in the future. de facto spouses can take full advantage of the Family Law Act provisions relating to Binding Financial Agreements (colloquially known as 'pre-nups'). Parties can enter into these Agreements prior to the commencement of the cohabitation, during the cohabitation (even if things are happy), and after separation. They can provide protection with respect to potential property settlements and can set out how the asset pool is to be divided upon any separation / eventual separation.

If you are considering separating or entering into a Binding Financial Agreement or would like to discuss your rights in a property settlement, contact our Accredited Family Law Specialist, for further information.