



Factsheet - De Facto Relationships - Property and Maintenance

General Information

New provisions in the *Family Law Act 1975 (Cth)* now provide separated de facto couples the ability to access provisions in the *Family Law Act 1975 (Cth)* dealing with the division of property and the payment of spousal maintenance. The new laws apply to couples whose relationship broke down after 1/03/09, the date when the new laws commenced.

De facto couples who separated before the 1/03/09 need to still use State or Territory laws (*Relationship Act 2003* in Tasmania), although they can choose to have the new laws apply to them. Couples who have obtained final court orders about their property or for payment of spousal maintenance under a State or Territory law cannot choose to apply the new laws. Neither can couples who have made a written agreement binding courts on those matters under State or Territory law, except where the agreement has ceased to have effect without property being distributed or maintenance paid.

Written agreements binding courts that couples made about their property or spousal maintenance under the *Relationships Act 2003* before 1/03/09 continue to apply.

Meaning Of De Facto Relationship

A de facto relationship is a relationship that two people who are not married or related by family have as a couple living together on a 'genuine domestic basis'. A de facto relationship can exist between 2 persons of different sexes and between persons of the same sex.

Circumstances Required For De Facto Relationship To Exist

All the circumstances of the relationship will determine whether a couple have a de facto relationship. These are defined in s.4AA(2) of the *Family Law Act 1975 (Cth)* and include:

- the duration of the common relationship;
- the nature and extent of their common residence;
- whether a sexual relationship exists;
- the degree of financial dependence or interdependence, and any agreements for financial support, between them;
- the ownership, use and acquisition of their property;
- their degree of mutual commitment to a shared life; whether the relationship has been registered, in a State or Territory with laws for the registration of relationships;
- the care and support of children; and
- the reputation and public aspects of their relationship.

Time Limit

Parties must apply to a Family Court within two (2) years of the end of their de facto relationship for property or maintenance orders. In limited circumstances, the court may grant leave to make an application after the end of that period.

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Financial Agreements

Parties to a de facto relationship may enter a financial agreement before commencing a de facto relationship, at some time during the relationship or when the relationship breaks down to formalise any property or maintenance arrangements made between them. A financial agreement may contain details of how, in the event of a breakdown in the relationship, the property or financial resources of either or both parties is to be dealt with, the maintenance of either of the parties of the relationship and how superannuation interests will be divided.

To be binding a financial agreement must be signed by the parties, must contain a statement that prior to signing each party received independent legal advice and a certificate signed by the legal practitioner who gave that advice, the agreement has not been terminated and has not been set aside by a court.

Property Orders

A partner of a de facto relationship may apply to the court for an order adjusting the interests in the property of the partners.

In making an adjustment order for property, the court will take into account a number of factors including both partners contributions to the relationship (financial and non-financial), the financial resources of both partners and the nature and length of the relationship.

In proceedings for an adjustment or maintenance order, a court is to make an order that will finally determine the financial relationship between the partners and avoid further legal proceedings between them.

Maintenance Orders

A partner in a personal relationship may also apply to court for a spousal maintenance order. A court may make such order as it considers proper for the maintenance of one of the parties to the de facto relationship.

A court may make a maintenance order if it is satisfied that the partner applying for maintenance is unable to support him or herself adequately because they have the care and control of a child of the de facto relationship who is under 18 years of age, or their earning capacity has been adversely affected by reason of age or physical or mental incapacity for appropriate gainful employment, or any other adequate reason.

In making a maintenance order, a court will disregard any entitlement of the party whose maintenance is under consideration to an income-tested pension or benefit.

A maintenance order will cease to have effect if either partner dies, or if the partner in whose favour the order was made marries.

RELEVANT LEGISLATION

Family Law Act 1975 (Cth)

RESOURCES

"Property Division When De Facto Relationships Break Down" - Fact Sheet from the Attorney-General's Department

CONTACTS

Federal Magistrates Court

The information contained in this factsheet is not legal advice. If you have a legal problem you should talk to a lawyer before making a decision about what to do. The information in this factsheet is written for people resident in, or affected by, the laws of Tasmania, Australia only. All questions concerning this factsheet to info@legalaid.tas.gov.au.