

## Family Law Fact Sheet

### Spending the night vs a de facto relationship Am I really in a de facto relationship and what does that mean?

#### Defining the de facto

A de facto relationship is a relationship between two people who live together on a genuine domestic basis but who are not legally married. Two people who are “flat mates” are not de facto partners, nor are those who live with another person as their carer or because they are related. The two partners can be same sex partners, as well as heterosexual partners.

De facto couples have similar rights to property settlement as married couples in the event of separation.

There is no one definition of a de facto relationship. This is because there are different definitions for what constitutes a de facto relationship for property settlement purposes.

#### If you separated after 1 March 2009

In Queensland, if you and your de facto spouse separated after 1 March 2009, your property settlement entitlements will be governed by the provisions of the *Family Law Act 1975*.

Under the *Family Law Act*, a person is in a de facto relationship with another person if:

- the persons are not legally married to each other; and
- the persons are not related by a family; and
- having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.

In working out if a couple is in a de facto relationship, the Court looks at various circumstances which may include any or all of the following:

- the duration of the relationship;
- the nature and extent of their common residence;
- whether a sexual relationship exists;
- the degree of financial dependence or inter-dependence, and any arrangements for financial support between them;

- the ownership, use and acquisition of their property;
- the degree of mutual commitment to a shared life;
- whether the relationship is or was registered under a prescribed law of the State or Territory as a prescribed kind of relationship;
- the care and support of any children;
- the reputation and public aspects of the relationship.

#### Property settlement rights under the *Family Law Act*

If you wish to make an application to the Family Court for property settlement and maintenance orders after the breakdown of the relationship, you must satisfy the Court that you were in a de facto relationship.

You must also satisfy the Court as to the following:

- The period (or the totals of the periods) of the de facto relationship is at least 2 years; or
- That there is a child of the de facto relationship; or
- That the party to the de facto relationship applying for a property order made substantial contributions to the relationship and a failure to make an order would result in a serious injustice; or
- The de facto relationship was registered in a State or Territory.

Presently, de facto relationships can not be registered in Queensland.

#### Additional requirements

There are additional requirements you must satisfy before the Family Court can make orders for property settlement and maintenance. Some of these requirements include:

- The parties to the de facto relationship need to be ordinarily resident in the State where the

application to the Court is made for at least one-third of the relationship; or

- The parties must have made substantial contributions in the relevant State; or
- The parties must be ordinarily resident in a 'participating jurisdiction' when the relationship broke down.

The majority of de facto couples in Australia now have their property and maintenance matters dealt with under the provisions of the *Family Law Act*. However there are some States that are not governed by the *Family Law Act*. Seek legal advice if you reside or have resided outside of Queensland during the relationship.

### Time limits

A party to a de facto relationship must resolve property matters within two years after the end of the relationship.

If a party does not make an application, then the party will be required to obtain the leave of the Court to apply for a financial order. Leave will only be granted in limited circumstances.

### If you separated before 1 March 2009

If you and your de facto partner separated after 21 December 1999 but before 1 March 2009, your property settlement entitlements will be governed in Queensland by the provisions of the *Property Law Act 1974*.

There are different requirements under the *Property Law Act* for a party requesting the Court to make property settlement orders.

The main differences are that the Court cannot deal with the superannuation of the parties or make orders for spousal maintenance.

If you and your de facto spouse separated prior to 1 March 2009, seek legal advice as to your property settlement entitlements.

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