

## DE FACTO RELATIONSHIPS



As of 1 March 2009 new laws have been introduced providing that all de facto relationships, both heterosexual and same sex, that breakdown from that date will be dealt with by the Family Court of Australia and not the state courts as was previously done.

The new regime will not apply to de facto couples whose relationship has broken down before 1 March 2009 unless both parties opt into the new de facto laws. If the parties do not opt into the new laws, their property matter will still be dealt with under the old state legislation that is, in either the District or Supreme Courts.

In some states for example, in New South Wales, there is a significant difference between the property and maintenance rights currently provided under State Legislation to de facto couples and those now provided under the Family Law Act.

### **What is a de facto relationship?**

For parties to be in a de facto relationship, they must have entered into a relationship of at least 2 years or there must be a child of the de facto relationship or one party must have made substantial contributions to the wellbeing and maintenance of the family and it must be decided by the court that a failure by it to make an Order or Declaration would result in a serious injustice to the Applicant.

Under the new legislation, a de facto relationship is defined as persons who are not legally married to each other, not related by family and having regard to all circumstances of their relationship having a relationship as a couple living together on a genuine domestic basis. When determining whether persons have a domestic relationship, the Court has regard to the duration of the relationship, the nature and extent of the common residence that is, their home, whether a sexual relationship exists, the degree of financial dependence or independence or any arrangements for financial support between the parties, the ownership use and acquisition of their property, the degree of mutual commitment to a life shared, whether the relationship was registered under the prescribed law of a state or territory, the care and support of children and the public recognition and reputation of that relationship.

The law envisages that a de facto relationship can exist even if one of the persons in that relationship is legally married to someone else or is in another de facto relationship.

## **Registration of the relationship**

The new laws also provide the option for de facto relationship to be registered, similar to a marriage, in states or territories and this will also be a clear indication that two parties are in a de facto relationship. The effect of the new legislation is that if the de facto relationship exists the registration of certain relationships that are not marriages may create legal rights and obligations that are very similar to marriages in particular, same sex couples who are able to and do register their relationship in the state or territory will virtually be in the same position as couples who marry in the event that their relationship breaks down and there needs to be an alteration of property or a consideration of maintenance to one of the parties.

From 1 July 2009 a parent of a child in a same sex relationship which has broken down can also apply for Child Support from the other parent.

The new laws also allow now superannuation interests of a de facto party to be split when dividing up the couple's property.

## **Financial Agreements**

De facto Parties can also enter into Binding Financial Agreements commonly known as pre-nuptial agreements. Marriage would terminate any financial agreement which they might have and it is wise to enter into another agreement. De facto partners can also enter into Binding Financial Agreements. They can enter into these agreements before co-habitation, during co-habitation and after the break down of their relationship. The agreements may be set aside if one of the parties to the agreement was not provided with independent legal advice from a legal practitioner before signing the agreement about the effect of the agreement and the rights of the parties and to the advantages and disadvantages at the time the advice was provided to the party making the agreement. Such advice was provide but there wasn't a Certificate signed by the lawyer.

## **Limitation Period**

In de facto matters there is a limitation period in which you can bring proceedings. The law states that a Financial Application can only be brought in a de facto matter if the Application is made within 2 years after the end of the de facto relationship.

If you require our assistance with any aspect of your De facto relationship please do not hesitate to contact us on 9525 8100.