



De facto property settlement in family law

Date: Sunday February 4, 2024

Family law [property settlement](#) proceedings in Australia treat people who are in a de facto relationship in the same way as people who are married. A common question, however, is how to know if you are in a de facto relationship. In this blog, we will explore what constitutes a de facto relationship and provide information regarding property settlement disputes.

What is a de facto relationship?

Two people are considered to be in a de facto relationship under the [Family Law Act](#) if:

1. they are not legally married to each other;
2. they are not related by family; and
3. they are living together on a genuine domestic basis.

If two people are married, the marriage certificate is evidence of this. However, the existence of a de facto relationship is more difficult to prove. If one person asserts that a de facto relationship does not exist, the other may need to make an application to the Court and ask the Court to decide.

What does the Court consider when determining if a de facto relationship exists?

When determining whether a de facto relationship exists, the Court may take the following circumstances into account:

- The duration of the relationship;
- The nature and extent of the couple's common residence;

- Whether a sexual relationship existed;
- The degree of financial dependence or interdependence between the couple;
- The ownership, use and acquisition of property;
- The degree of mutual commitment to a shared life;
- Whether the relationship is or was registered under a prescribed law (in Victoria, a couple in a de facto relationship can register their relationship with the Registry of Births, Deaths and Marriage);
- The care and support of children; and
- The reputation and public aspects of the relationship.

The above list is not exhaustive. The Court has discretion as to what factors are considered and how much weight is attached to any particular factor.

De Facto property settlements after separation

If your de facto relationship broke down after 1 March 2009 (or after 1 July 2010 if you are located in South Australia), the Federal Circuit and Family Court of Australia will deal with de facto property settlement in the same way as they would deal with disputes for married couples.

The Court must be satisfied that:

1. You were in a genuine de facto relationship with your partner that has broken down;
2. At least one of the following criteria apply:
3. The period of your de facto relationship is at least two years;
4. There is a child of your de facto relationship;
5. Your relationship is or was registered; or
6. There have been significant contributions made by you or your former partner, and the failure to issue an order would result in a serious injustice.
7. You have a geographical link to the jurisdiction*.

** In Western Australia, you will have a jurisdictional link if you or your former partner are ordinarily resident in Australia at the time the application is made, and both you and your former partner were ordinarily resident in Australia during at least a third of the de facto relationship.*

Are there time limits for de facto property settlement?

Yes.

You and/or your former partner have two years from the date you separated to formalise your property settlement (this can be done by way of an [Application for Consent Orders or Financial Agreement](#)) or to issue property settlement proceedings in Court.

Once this date has passed, you and your former partner can still agree to formalise any property settlement agreement reached out of time. However, if there is no agreement, the party seeking a property settlement will need to apply to the Court for leave to make an application out of time. Leave cannot be guaranteed, so it is important that you do not let this date pass.

If you are out of time to finalise your property settlement, you should seek legal advice from an experienced family lawyer.

[GET ADVICE FROM A FAMILY LAWYER: 03 9006 8907](#)

If leave is granted, your property settlement will be dealt with under the Family Law.

Helpful resources for family law property settlement

At Emera Family Law, we have a number of articles that may be beneficial reading if you are considering separation and entering into property settlement negotiations.

- [How are assets divided after separation or divorce?](#)
- [How to negotiate a fair property settlement](#)
- [Top 5 tips for an amicable property settlement](#)
- [Are my future needs considered in Family Law property settlements?](#)
- [Valuations for family law property settlement](#)

How can a family lawyer help?

Family law property settlement processes are almost identical whether you were married or in a de facto relationship. The primary differences relate to determining if you were in fact in a de facto relationship and the time limits that apply to you. If there is a dispute about your de facto relationship status, collating the right type of evidence and doing so in a timely fashion is crucial.

If you would like more information in relation to what constitutes a de facto relationship or advice regarding a property settlement following a separation, our team of highly experienced family lawyers can assist you.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.