

FAMILY LAW: An overview of de facto and registered relationships

Definition of “de facto”

According to the *Family Law Act* (the Act), a couple is in a de facto relationship, if they:

- are not married to each other;
- are not related by family; and
- have a relationship as a couple living together on a genuine domestic basis.

The Act provides that a de facto relationship can exist irrespective of whether:

- the couple are of the same sex or different sex;
- if one of the parties is legally married to someone else; or
- if one of the parties is in another de facto relationship.

In determining whether a genuine de facto relationship exists, there are a number of factors that a Court will take into consideration, including:

- the length of the relationship;
- the length of time that the couple have you lived together, if at all;
- whether a sexual relationship existed;
- the degree of financial dependence or interdependence and any arrangements for financial support between the couple;
- the ownership, use and acquisition of property;
- the degree of mutual commitment to a shared life;
- whether the relationship is registered under a State law;
- the care and support of any children; and
- the reputation and public aspects of the relationship.

Legal treatment of de facto relationships

In 2009, the Federal Government made changes to family law and de facto relationships. These changes give de facto couples almost the same rights and obligations as married couples. Accordingly, people in a de facto relationship now have the same financial responsibilities to their partners as if they were married. Any disputes over children or over property, which are the product of a de facto relationship, will be treated by law in the same way as for a married couple.

De facto couples do not need a separation declaration or any legal document to end their relationship. The fact of separation is no different to that of a married couple and, like married couples, de facto couples can be separated even if they continue to live under the one roof.

Applying for property adjustment and/or maintenance orders

A party to a de facto relationship can bring an application for a property settlement or spousal maintenance under the Act, within two years of the cessation of the relationship. After that time, an application for a property settlement can only be made with the consent of the parties or with permission from the court.

The Act only applies to a de facto party seeking to apply for property adjustment and/or maintenance orders when one of the following conditions is met:

- the period, or the total periods, of the de facto relationship is at least two years;
- there is a child of the de facto relationship – this must be the child of both parties to the relationship;
- one or both parties to the relationship made substantial contributions and it would be seriously unjust for that party, if the Act did not apply; or
- the relationship is registered.

What is a registered relationship?

In Queensland, couples of any sex can register a relationship under the State's *Relationships Act 2011*. Some other States in Australia have similar legislation. A registered relationship is different from a marriage but parties to the relationship have almost the same rights and obligations as married couples under the Commonwealth Family Law Act.

In order to register a relationship, certain criteria need to be met and an application form lodged.

A registered relationship ends when either partner dies or marries, or by an application to the Registrar to terminate the registered relationship.

We can offer legal advice about applying to register a relationship, applying to terminate a registered relationship, child and property matters in the event a registered relationship is terminated or appealing a decision of the Registrar regarding an application to register or terminate a relationship.

Require further information or advice?

For further general information about related topics, browse the range of other information sheets, tools for clients and information updates available on the 'Resources' page of our website.

If you require advice regarding any of the following:

- de facto and registered relationships
- property settlements
- spousal maintenance
- divorce applications
- child and parenting matters
- making a new Will or power of attorney document to take account of changed circumstances
- buying or selling property

Swanwick Murray Roche can provide timely tailored advice about your circumstances. We can offer professional advice and a compassionate approach when dealing with family and personal matters.

Please do not hesitate to contact us by phone on 4931 1888, email at enquiries@smrlaw.com.au, via our online enquiry form or by any of the other means detailed on our website www.smrlaw.com.au.