



New regime for De Facto property settlements

From 1 March 2009, de facto couples will now be able to settle their property law disputes under the *Family Law Act 1975 (The Act)*. Prior to the amendment, couples were only granted access to The Act where parental issues were concerned.

Objectives

The primary objective of the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* is to give opposite and same sex de facto couple's access to the Federal Family Law jurisdiction. If your relationship breaks down, the amendment makes provision for maintenance to dependents of the relationship and ensures property settlements are just and equitable for each party.

The new regime largely mirrors The Act's provisions for married couples, adopting a more unified approach to Family Law Disputes. Applications are now heard under the same set of rules in each State or Territory. Previously, property or financial disputes were dealt with under the corresponding State or Territory's Property Law Act, resulting in settlements that were often unfair and inconsistent. The new regime seeks to personalise your matter whilst appropriating orders that suit both parties and provide for each parties contributions to the relationship.

What does this mean?

This means that you and your partner are more likely to reach a settlement that is realistic and mutually beneficial upon separation. For example, parties can now apply to the Family court for "consent orders", which means that the orders put before the court are consented to by both the parties. Unlike the old State and Territory jurisdiction, if the Presiding Magistrate considers the asset split unreasonable, they can refuse to make orders and postpone the matter until the parties have explained to the court the reason for the uneven split.

Do I have to proceed under The Act?

Parties to relationships that broke down after 1 March 2009 cannot institute proceedings in relation to financial matters other than under The Act. The parties can agree to settle their property matters without seeking orders from The Family Court, however it is advisable to split the assets of the relationship in terms of consent orders in order to ensure the outcome is equitable and enforceable. A financial application in a de facto matter must be brought within two years from the date of separation and there are limited exceptions to this rule.

What if our relationship broke down before 1 March 2009?

The new regime excludes de facto couples who separated before 1 March 2009 however couples can elect to have their matter proceed through The Family Court, provided both parties “opt in” to the new regime. The decision must be unconditional and once an application is before the court, that decision is irrevocable. Are there any other restrictions?

For the Federal jurisdiction to hear applications for property settlements and de facto maintenance, the court must be satisfied that the application is made in accordance with The Act.

There are three elements that the parties have to satisfy:

- The relationship is a genuine de facto relationship, not a dependent domestic relationship.
- That both parties have a geographic connection to a State or Territory that has referred their power to the Federal Family Law jurisdiction to hear the matter.
- That the de facto relationship broke down after the commencement of the amendment, or that the parties consent to have their matter determined under the new regime.

What is a de facto relationship?

The regime considers a “de facto relationship” exists between the parties when

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

S4AA of The Act narrows the scope and provides a list “gateway requirements” that The Family Court is to consider when determining whether the parties are in living in a “de facto relationship”. For example:

- The duration of the relationship (must be of at least 2 years),
- The nature and extent of the common residence,
- Whether there is a child of the relationship,
- Whether the relationship is registered under a prescribed law of a State or Territory; and
- Whether one party has made substantial contributions and failing to make an order or declaration would result in a serious injustice.

Once the court is satisfied that a de facto relationship exists, it may make orders regarding de facto maintenance and financial applications.

Where do I go from here?

Contact Rostron Carlyle Solicitors for further information concerning any of your Family Law concerns on (07) 3009 8444.

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