

Family Law Act now covers parties in De facto Relationship

The Family Law Act was recently amended to provide that parties in de facto relationships, whether heterosexual or same sex, who separate after 1 March 2009 will have their property and maintenance matters dealt with under the Family Law Act (although certain exceptions apply). Parties in de facto relationships whose relationship breaks down before 1 March 2009 can “opt in” to the new regime.

In assessing whether parties are in a de facto relationship the Court must have regard to a number of different factors, e.g. the duration of the relationship and whether the relationship was registered. The Family Law Act treats property settlements between de facto couples in a similar manner to the way that it treats property settlements between married couples and it allows parties in de facto relationships to split their superannuation entitlements.

Couples in de facto relationship must also comply with at least one of four gateway requirements, i.e.:

- (a) The relationship must be of at least two years duration;
- (b) There must be a child of the relationship; or
- (c) The relationship must be registered under a prescribed law of a state or territory; or
- (d) A party must have made substantial contributions and a failure to make the order or declaration would result in serious injustice to the applicant.

Parties in de facto relationship whose relationship breaks down after 1 March 2009 and those whose relationship breaks down prior to that date but who opt in, will be able to issue proceedings in the Family Court or the Federal Magistrates' Court whereas previously they had recourse only to the state Courts. The Family Court and the Federal Magistrates' Court are more accessible and less costly than the state Courts.

Parties in de facto relationships or considering entering into a de facto relationship can enter into a Financial Agreement to oust the jurisdiction of the Family Law Act and set out how their assets will be divided in the event of a breakdown of the relationship. A Financial Agreement can also set out what, if any, maintenance is to be paid by the parties. Parties in a de facto relationship or considering entering into a de facto relationship should give serious consideration to entering into a Financial Agreement to protect their assets and to provide them with certainty in the event of a relationship breakdown.

For more information on this topic or for Family Law information generally, please contact one of our Family Law Workgroup.

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