

# DE FACTO RELATIONSHIPS



Since 1 March 2009, the breakdown of de facto relationships have been dealt with via the one uniform Act and in the same Courts that deal with marriage breakdown. Unlike marriages though, de facto relationships can, at times, be difficult to prove in terms of whether a couple (including same sex couples) are living together as de factos. While many de facto relationships are very much plain to see, couples whose commitment levels vary at different times (or where living circumstances are more akin to 'boyfriend' and 'girlfriend' style arrangements) often result in arguments as to whether de facto rights exists at all. In such cases, the Family Court or Federal Circuit Court can be asked to intervene and determine whether a de facto relationship did or did not exist.

There are many factors that are taken into account to determine whether a de facto relationship does or does not exist. As a guide, some relationship scenarios (already considered by the Court) are below:

## **Brad & Julia:**

For about five years Brad spent 3 to 4 nights a week at Julia's house. Brad wished to avoid being in a de facto relationship with Julia and for that reason, he only spent those nights at Julia's home and maintained a separate bank account. Later, Brad purchased an investment property. As Julia was having difficulties finding a property to rent, Brad allowed her to live in his investment property with her children. However, Julia did not make regular or fixed payments to Brad for rent.

***In circumstances similar to this, the Court held that a de facto relationship existed due to the nature and extent of their common residence. As regular or fixed rental payments were not made, the Court did not classify the relationship as similar to landlord and tenant.***

## **Ken & Denise:**

Ken and Denise were in a relationship for about 17 years. Ken remained married and kept his relationship with Denise a secret from his wife. Ken and Denise lived in separate houses and only ever lived together for a few weeks at a time when they were travelling on overseas holidays or at Ken's holiday house. For several years, Ken made regular payments to Denise for her financial support and also assisted her with the purchase of a house.

***In circumstances similar to this, the Court did not find that there was a de facto relationship. The Court acknowledged that there were several circumstances that suggested a de facto relationship did exist, but that on balance, the couple had maintained separate lives.***

## **Walter & Tara:**

Walter and Tara lived together for 2 and a half years. They purchased a property together in joint names and shared a franchise business. They regularly holidayed together. Six months after they began living together, Tara secretly married another man but continued her relationship with Walter.



***In circumstances similar to this, the Court held that even though Tara had been married to another man, this did not preclude there being a de facto relationship, in the circumstances of this case.***

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In particular, a person is in a de facto relationship with another person if:-

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

Having a relationship 'as a couple' includes an assessment of any or all of the following:-

- the duration of the relationship;
- the nature and extent of their common residence;
- whether a sexual relationship exists;
- the degree of financial dependence or interdependence, and any arrangements for financial support;
- the ownership, use and acquisition of any property owned together;
- the degree of mutual commitment to a shared life;

A court is not limited to the circumstances mentioned above in working out whether a couple are in a de facto relationship and can take into consideration any matter that it deems relevant in relation to establishing or dismissing the existence of a de facto relationship.

There are further threshold requirements to apply to the Court, however, including whether:-

- there was a relationship of least two years; or
- the couple have a child together; or
- one party has made substantial contributions to the welfare and wealth of the family; or
- there would be a serious injustice if one party were not permitted to apply.

### **Property Settlement**

After considering the above, the court will reach a decision about whether a de facto relationship existed and whether the necessary thresholds are met. If so, the case will proceed and each of the party's rights will be almost identical to a person who was married (in relation to property adjustment and in some cases, maintenance and support).

### **Time Limits for Making a De facto Property or Spousal Maintenance Application**

A person must institute proceedings within two years of separation. In cases, where a relationship ended more than two years ago, a person must obtain leave of the Court.

### **Where to next?**

Being a technical area, the first step would be to arrange an appointment with one of our Family Law team members, which can be arranged via contacting our Client Relationship Manager, Michelle Silipo on (07) 5552 6601. A confidential, initial consultation can then be arranged to discuss your circumstances and any queries you may have.