

De Facto Relationships | Empower Family Law & Mediation

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Details:

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De Facto Relationships

In today's world many couples choose not to marry, some do not like the idea of marriage, while others would simply prefer to avoid the stress and expense of a wedding. The Family Law Act 1975 recognises this social shift by ensuring that separating de facto couples come under the auspices of the law in much the same way as married couples.

At Empower Family Law & Mediation we can help you if your de facto relationship ends.

If parties are unable to agree by negotiation or attending a mediation, the Federal Circuit and Family Court of Australia can make decisions about the division of the property held between de facto spouses and decide the parenting arrangements for children of de facto relationships.

To make an order for property and maintenance issues on behalf of a de facto couple, the Court must be satisfied that at least one of the following applies:

the couple were in a de facto relationship for at least two years; or

there is a child of the relationship; or

the relationship was registered under a prescribed law of a State or Territory; or

one party made substantial contributions to the relationship, and without orders providing for the division of property, there will be serious injustice.

In deciding whether a de facto relationship existed, the Court will consider:

how long the relationship lasted.

whether the parties lived together and how long for.

if there was a sexual relationship.

if the parties were financially dependent on each other, and any arrangements for financial support that existed.

how any property was owned and used.

if there was a commitment to a shared life together.

whether there were children, and how they were cared for.

whether the relationship was registered.

how other people saw your relationship.

Legally, you could be considered to be in a de facto relationship even though one or both of you are still married to another person, or one or both of you are in another de facto relationship. Neither shared residences nor monogamy is definitive proof of the existence or non-existence of a de facto relationship.

If a party meets the definition of a de facto couple and cannot agree about arrangements for their property or maintenance, the Federal Circuit and Family Court of Australia will deal with the matter in a very similar way to the way it would a married couple. Please refer to our page about Property for more

information.

It is vital that if an agreement about property division cannot be reached, a party to a de facto relationship files an application with the Federal Circuit and Family Court of Australia within 2 years of the date of separation. After that time, the party making the application will need the Court's permission, which is not always guaranteed.

How we can help

At Empower Family Law & Mediation we have the experience to assist you to fully understand and pursue your entitlements following the breakdown of a de facto relationship. We will offer a comprehensive assessment of your situation and your options, and we will be upfront about our costs.

Please contact us on (03) 7020 6542 to discuss your situation.

FAQ's

What makes a relationship "de facto"?

It's a relationship between two people who live together as a couple on a genuine domestic basis and aren't married to each other.

Do we need to have been together for two years?

No, 2 years is only one way to qualify, but you can also qualify if you have a child together, if your relationship was registered, or if one of you made substantial contributions.

How long do I have to apply for a property settlement?

Generally, 2 years from the date of separation. After that, you need the Court's permission, which isn't guaranteed.

Is property divided the same way as for married couples?

The Court takes a very similar approach. It looks at what each of you contributed, what each of you will need in future, and what is fair in all the circumstances.

Can superannuation be divided?

Yes. Superannuation can be split between de facto partners as part of a property settlement.

Do we have to go to Court?

Not necessarily. Many couples reach agreement through negotiation or mediation and can formalise it by way of Consent Orders or a Financial Agreement.

What if we disagree about when we separated?

The date of separation affects your time limit, so it's worth keeping a record of when and how the relationship ended and speaking to a lawyer as soon as possible.

Speak with us

Your first 30-minute consultation is free. Call (03) 7020 6542 or contact our team to discuss your circumstances and next steps.

Phone : (03) 7020 6542

Email : info@empowerfamilylaw.com.au

Let us be your voice in troubled times.

Contact Us

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How is a de facto relationship identified for family law purposes?

A de facto relationship generally involves two people who are not married to each other and live together as a couple on a genuine domestic basis. The assessment looks at the relationship as a whole rather than relying on one label or document. Relevant circumstances can include duration, shared residence, financial interdependence, property, mutual commitment, children, public presentation and the nature of the household. No single factor is always decisive. People may disagree about whether a relationship existed or when it began or ended, and the evidence can affect jurisdiction and time limits. Preserve documents that show living arrangements, finances and the parties' conduct. A person should obtain tailored advice where the status is disputed, the parties lived in more than one place, the relationship was intermittent, or there are connections with different states or countries.

Do de facto partners always need to have lived together for two years?

Two years is an important pathway, but it is not the only way a de facto property or maintenance claim may qualify. Other pathways can include having a child together, registration of the relationship, or substantial contributions in circumstances where denying an order would cause serious injustice. The precise test and the evidence needed depend on the claim. A shorter relationship should therefore not be dismissed without advice, and a relationship longer than two years does not predetermine how property will be divided. Status, jurisdiction, contributions, future circumstances and the overall justice of any proposed property outcome are separate questions. Evidence may include registration records, information about children, financial contributions, unpaid work, improvements to property and the way the parties arranged their shared life.

How are property and superannuation dealt with after a de facto separation?

Eligible de facto partners use a family law framework similar to that applied to married couples. The process generally identifies and values assets, liabilities, superannuation and financial resources; considers financial and non-financial contributions; examines relevant future circumstances; and tests whether the overall result is just and equitable. There is no automatic equal division. Superannuation can be included and may be split through appropriately drafted orders or an agreement, although a split normally remains subject to superannuation preservation rules. Full disclosure is essential. Informal transfers or a private understanding may not provide finality, may leave joint liabilities unresolved and may not implement a superannuation split. Obtain advice before signing or transferring property so the legal, tax and practical consequences are understood.

What time limit applies after a de facto relationship ends?

An application for property settlement or spousal maintenance by a former de facto partner generally must be started within two years of separation. Disputes about the separation date can therefore have serious consequences. Record when the relationship ended, how that was communicated and any change in living, financial or social arrangements. A late application may require the Court's permission, which is not automatic and can add cost and uncertainty. Do not wait until the deadline to begin collecting disclosure or trying to negotiate. Early advice allows time to confirm jurisdiction, identify the asset pool, exchange information and explore settlement. Parenting and child support issues operate under different processes and should be addressed separately where relevant.