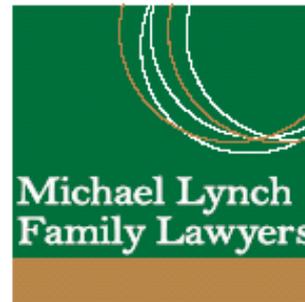


family flyer



Introduction

The Family Flyer is a free community service by Michael Lynch Family Lawyers. The publication is designed to be informative and topical and to assist you in understanding the ever-changing field of Family Law.

This edition includes:

- Defacto Relationship Property Settlement Legislation
- Guide to Family Law - Everyday Answers

DEFACTO RELATIONSHIP PROPERTY SETTLEMENT LEGISLATION

Background

Legislation exists in Queensland dealing with defacto relationship property matters.

The legislation was introduced into Queensland Parliament on 9 December 1999 and commenced on 21 December 1999.

The Legislation

The legislation is referred to as The Property Law Amendment Act (1999).

Most defacto partners will regard the changes as long overdue however some property holding partners may be surprised at the claims their partners now have on their property.

The legislation deals with all property of defacto partners not just real estate.

Application

The new legislation effects all defacto partners who separate after 21 December 1999. A defacto spouse has been defined to include, same sex partners. An Application for Property Settlement must be made within two years of the end of the relationship, unless leave of the Court is obtained.

Entitlement:

A defacto spouse may apply for a Property Settlement, if:

- the couple have lived in a defacto relationship for at least two years;
- there is a child of the defacto relationship; or
- it would be unjust to fail to recognise a defacto spouse's financial or nonfinancial contribution.

A defacto spouse cannot claim Spouse Maintenance.

Recognised Agreements

If a defacto couple do not want to be bound by the new legislation they can enter into a recognised agreement, which can deal with the division of property.

An agreement can be made before or during the relationship, or after separation.

This therefore gives defacto spouses the same power that married couples have in controlling the division of property.

Factors Considered

The criteria for the division of property under the legislation is very similar to the criteria as set out under the Family Law Act. It considers financial and non-financial contributions made by a spouse, as well as a spouses current and future needs.

Relevant Court

An Order for defacto property settlement can be made in the Magistrates, District or Supreme Courts, but only the District and Supreme Courts can make a declaration as to whether a defacto relationship has existed.

Property Transfers

Transfers of property made between parties under the Legislation is exempt from stamp duty. This is the same as the law regarding transfers of property pursuant to Family Court Orders. The Stamp Duties Office will still require appropriate documentation reflecting the Terms of the Property Settlement, to verify that it is made pursuant to a defacto relationship settlement.

Other States

Legislation regarding property settlements between defacto couples is a State responsibility, whereas Family Law legislation is a Commonwealth responsibility.





Michael Lynch
Family Lawyers

Each State of Australia has different laws regarding defacto relationship Property Settlements.

Some States in Australia have been more proactive than others in introducing legislation. Queensland was the second last to introduce legislation. The only remaining State in Australia not yet to have any such Legislation is Western Australia.

The legislation in each State, differs significantly.

The Future

With any new legislation it is difficult to predict how it will be interpreted and acted upon by the Courts.

It is somewhat academic to attempt any prediction although it is fair to say that other State Courts have historically been restrictive in their interpretation of such types of legislation, although the legislation of each State has been different.

Social Change

The Queensland legislation has been a long time coming and very slow in keeping up with social change. It is the experience of Family Lawyers that the wider public has had a mixed understanding as to the state of the law. Some expect there to be legislation, but do not realise that there has been none and some know that there has been none and have been comforted by the high level of legal uncertainty.

Summary

All readers should note that the legislation carries with it new and specific time periods and it is critical that people in such relationships be aware of these so that their rights are protected.

Should you have any queries or concerns about property settlements between defacto couples we would actively encourage you to contact us at Michael Lynch Family Lawyers, on telephone number 3221 4300.

**GUIDE TO FAMILY LAW -
EVERYDAY ANSWERS**

We have produced a booklet entitled "A Guide to Family Law - everyday answers."

The Guide is an easy to read Family Law information booklet. It has been updated and re-printed and is now available.

The Guide is our flagship publication that we have produced for many years for clients and other interested readers.

It is available free of cost. If you have not received a copy please contact us and we will be happy to provide you with a copy.

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