



family flyer

Michael Lynch
Family Lawyers

Edition 94

- Special Edition - New Laws for De Facto Property Settlements

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:

- What is happening?
- What is a De Facto Relationship?
- What is Spouse Maintenance?
- Determining a Property Settlement
- Agreements
- Get Advice

WHAT IS HAPPENING?

On 1 March 2009, the most significant changes in the law ever for defacto relationship property settlements commenced.

For defacto couples that separate after 1 March 2009, their property settlements will now come under the Family Law Act (FLA), not the State laws. For defacto couples (in Queensland) that have separated prior to 1 March 2009 their property settlements will continue to be determined under the Queensland legislation.

South Australia and Western Australia have elected not to come under the FLA.

WHAT IS A DEFACTO RELATIONSHIP?

From 1 March 2009 the Family Law Act defines a De Facto Relationship as, 'the relationship of a couple living together on a genuine domestic basis'. The legislation sets out an extensive list of indicators as to what can be considered by the Court in determining a "genuine domestic" relationship, including duration of relationship, sexual relations, degree of financial support, care of children, public aspects of the relationship etc.

The legislation includes opposite and same gender couples.

The Court can only make a financial order for a defacto couple if the Court is satisfied that:

- the period of the defacto relationship is at least 2 years; or
- there is a child of the defacto relationship; or
- failure to make a property order would result in serious injustice to one of the spouses.

SEPARATIONS PRIOR TO 1 MARCH 2009:

If you separated prior to 1 March 2009, under Queensland law, you are not able to pursue spouse maintenance, nor can you include superannuation (or split it) as part of the property settlement.

Each States laws are slightly different, however they are all more restrictive and provide lower financial outcomes than can now be pursued under the Family Law Act.

Defacto couples that separate prior to 1 March 2009 are able to "opt in" to the Family Law Act, however to do so requires joint agreement and each spouse must have obtained a signed "solicitors certificate".

SEPARATIONS AFTER 1 MARCH 2009:

Defacto couples that separate after 1 March 2009, are now able to pursue spouse maintenance and superannuation



now forms part of the “property” and can therefore be “split”, if necessary.

WHAT IS SPOUSE MAINTENANCE?

A Spouse Maintenance entitlement may exist, if there is a (significant) income gap between the parties and the lower income earning party does not have the capacity to meet their own (reasonable) financial “needs”. If such a situation exists then, the court will consider the financial “capacity” of the high income earner to meet the (reasonable) financial “needs” of the low income earner.

Payments continue for such time as is appropriate for the lower income earner to financially re-establish themselves through retraining and/or employment.

DETERMINING A PROPERTY SETTLEMENT

The Family Law Act does not have a mathematical formula to apply in determining a property settlement, rather it sets out a list of relevant factors (contributions) for the Court to consider.

SPLITTING SUPERANNUATION:

Defacto couples that separate after 1 March 2009 can now include superannuation as part of the property for division and “split” (preserved) superannuation between themselves.

Superannuation can be “split” by agreement between the spouse or by Court Order, and

the split can occur in any percentage (it does not have to be equal).

TIME LIMIT

A Court Application for property settlement in a defacto relationship must be filed within 2 years of the date of separation.

AGREEMENTS:

Previous Agreements:

Defacto couples in Queensland have been able to enter agreements at the commencement of their relationship entitled “Recognised Cohabitation Agreements” (RCA). With the change in the law it is important that anyone with a RCA obtain Specialist Family Law advice to ascertain whether the agreement is still legally enforceable.

New Agreements:

From 1 March 2009 defacto couples are able to enter a Binding Financial Agreement setting out how any property division between them shall occur. Those agreements can be entered into before the relationship, during the relationship or after separation.

Property settlements agreed to after separation can be documented either by a Consent Order or a BFA.

GET ADVICE

The new laws represent a dramatic change for defacto couples. It is essential that Specialist Family Law advice be obtained. To make an appointment, contact us on phone 3221 4300 or visit www.mfl.com.au.

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