
Are you in a De Facto Relationship?

For the *Family Law Act* to apply to disputes about property and spousal maintenance following the breakdown of your relationship you must have been living together for a total of at least 2 years. If you don't meet this requirement, the Act may still apply if one of the following conditions are met:

- One party made substantial contributions and a failure to make an order will result in a serious injustice
- There is a child of the relationship
- The relationship was registered

To be in a de facto relationship:

- You cannot be legally married to each other
- You cannot be related
- You must be a couple living together on a genuine domestic basis
- You can be of the same or different gender

The circumstances which the Court considers in determining whether a de facto relationship existed include:

- (a) The duration of the relationship;
- (b) The nature and extent of their common residence;
- (c) Whether a sexual relationship exists;
- (d) The degree of financial dependence or interdependence, and any arrangements for financial support, between them;
- (e) The ownership, use and acquisition of their property;
- (f) The degree of mutual commitment to a shared life;
- (g) Whether the relationship is or was registered under State or Territory law as a prescribed kind of relationship;
- (h) The care and support of the children; and
- (i) The reputation and public aspects of the relationship.

Separation requires:

- (a) An intention to separate. The intention need not be mutual.
- (b) The communication of that intention to the other party. The communication must be unambiguous and unconditional.
- (c) Acting upon the decision to separate

Each case is decided on its facts. Some facts may indicate a de facto relationship existed and others may indicate that it did not. There may also be contradictory indications that the de facto relationship started or ended at a particular time.

A de facto relationship can exist even if:

- The parties live in separate cities
- The relationship is not exclusive
- They do not live together full-time
- There is no sexual relationship

By contrast, a de facto relationship can exist even if the parties have a child together.

State law applies if you separated before 1 March 2009 and both parties do not choose to "opt in" to the *Family Law Act*. State law also applies in Western Australia.

We can advise you on the law and the evidence you need to support your case about whether or not there was a de facto relationship when it started and ended.