



FAMILY LAW

DE FACTO RELATIONSHIPS IN WA

Generally speaking, a "de facto relationship" is where two people over the age of 18 live together as a couple in a marriage-like way. This includes same sex couples.

The main difference between marriage and de facto relationships are the rules governing them. Marriage is governed by Commonwealth legislation, while de facto relationships in Western Australia are governed by Western Australian laws. On 1 December 2002, the *Family Court Act 1997 (WA)* was amended so that the Family Court of WA has jurisdiction to hear property/financial matters of separated de facto couples. Previously, matters were heard by the Supreme Court.

When you separate from your de facto partner, a common problem is how to divide the assets accumulated during the relationship. In Western Australia, the law for the division of assets owned by a de facto couple is similar to that of married couples, except in regard to superannuation (which is treated as a financial resource, rather than a splittable asset). Formalising the division of assets is achieved by way of an Application for a Consent Orders, Court Order, or by a Binding Financial Agreement (BFA). However, we strongly suggest that parties seek legal advice before entering into any agreement.

In order to commence proceedings in the Family Court of WA for a property settlement, you must generally be able to show that:

- you have been in a de facto relationship for at least two years; or
- there is a child of the relationship under 18 years, and failure to make a property settlement order would cause a serious injustice to the person caring for the child; or
- the person applying for the order made substantial financial and/or non-financial contributions to the relationship and failure to make a property settlement order would cause serious injustice to that person.

An application for a property settlement (even if by consent) must be made no later than 2 years after the date of separation.

In order to be deemed a de facto couple for the purposes of the jurisdiction of the Family Court, parties need to be able to show the Court that a collection of the factors apply in their matter, including:

- residence in the same house. You should be aware however that even if you and your former partner have maintained separate residences, this does not necessarily preclude the Court from deeming you to be a de facto couple;
- there was a sexual relationship between the parties (although this not necessarily a strong indicator of a de facto relationship);
- there was financial interdependence and use / ownership of property;
- there was a degree of mutual commitment to a shared life; and
- reputation and public aspects of the relationship. That is, were the parties seen as a couple by friends, family and the community?

The question of whether parties were in a de facto relationship does not rely upon just one factor. The entirety of the circumstances will be considered.

This information constitutes general information only. If you require detailed advice on De Facto Relationships, or any other family law issue, please contact Natalie Dimmock at Murfett Legal Pty Ltd on (08) 9388 3100 or natalie@murfett.com.au