

What is a de facto relationship?

A de facto relationship is a relationship between two people regardless of sex or gender identity, who are not married or related by family and have been living together on a genuine domestic basis.

Commonwealth laws which govern the division of property in de facto relationships commenced in South Australia on 1 July 2010.

In effect, these laws provide for de facto couples following separation, to obtain property settlements pursuant to the same principles that apply under the Family Law Act 1975 ("the Act") to married couples.

These laws enable the Family Law Courts to make orders for the division of superannuation and non-superannuation assets that the couple own, whether it be separately or together.

Did you Know?

A de facto relationship can also be recognized under the Act where one of the persons in the relationship is legally married to another person or is in another de facto relationship.

South Australia | Registration of a De Facto Relationship

The *Relationships Register Act 2016* (SA) which came into operation on 1 August 2017, has since made it possible for a de facto couple to register their relationship with the office of Births Deaths & Marriages. However, certain conditions apply.

Does a De Facto Relationship Exist?

There are certain factors that the Court must consider in determining whether a de facto relationship existed, for example -

- The length of the relationship.
- The nature and extent of a common residence; and
- Whether a sexual relationship exists.

There are other factors that also apply.

1/327 King William St
ADELAIDE SA 5000

P | 08 8373 6473
E | hello@ylplegal.com.au
W | www.ylplegal.com.au

Am I Able to Bring an Application for Property Settlement Before the Courts?

Yes, if you cannot otherwise agree how to fairly divide the property between you. You must however, meet certain criteria, whether for example -

- The relationship existed for a minimum of 2 years; or
- There is a child of the relationship.

There are other criteria that also apply.

Is There a Time Limit for Making an Application?

An application for a de facto property settlement must normally be made within 2 years from the date of separation.

In some cases, an application can be made outside this requirement if the Court is satisfied that –

- hardship would be caused to the party applying or a child if leave were not granted; or
- If the application is for maintenance, and if after the standard 2 - year limitation period, that person was unable to support himself or herself without an income tested pension, allowance or benefit.

In Which Court do I File?

An application for property settlement and or “spousal” maintenance can be made to either the Family Court of Australia or the Federal Circuit Court of Australia.

Will I have to Pay Stamp Duty?

Stamp duty is not payable on an agreement made under the Act, or any transfer of property or motor vehicle or motor vehicles between former de facto partners pursuant to a family law agreement or Order made by the Family Law Courts.

1/327 King William St
ADELAIDE SA 5000

P | 08 8373 6473
E | hello@ylplegal.com.au
W | www.ylplegal.com.au