



## Property Settlements for Defacto Relationships

*Some of the most commonly asked questions about Property Settlements for Defacto Relationships are discussed on this page.*

### 1. What will the Court consider when looking at dividing property?

Property arising from a De Facto Relationship or a Domestic Relationship is dealt with under the Property (Relationships) Act. The Court will make Orders adjusting property that it considers “just and equitable”. In considering what is just and equitable, the Court will consider:-

- (a) The financial and non-financial contributions made directly or indirectly by or on behalf of one of the parties to the relationship to acquiring, maintaining and improving any of the property of the parties or the financial resources of those parties; and
- (b) Contributions, including any contributions made in the capacity of the home-maker or parent made by either of the parties to the relationship to the welfare of the other party of the relationship or to the welfare of the family of those parties if:-
  - (i) There is a child of that relationship; or
  - (ii) There is a child accepted by the parties into the household, whether or not that child is a child of either of the parties.

### 2. What are the assets of the relationship?

Generally, this will be property arising out of the De Facto/Domestic Relationship. It will include, for example, the home in which the parties live, any investment properties, motor vehicles, savings accounts, shares and other items. Unlike a marriage under the Family Law Act, Superannuation is not considered property under the Property (Relationships) Act but may be taken into account as a “financial resource”.

### 3. How will the Court determine a distribution of the assets?

After considering what assets there are to be distributed, a Court will consider the financial and non-financial contributions made by the parties towards acquiring, maintaining and improving those assets or to the financial resources of the parties.

### 4. If I reach an agreement with my ex-partner, can this save us going to Court?

Yes. The parties can reach an agreement as to the distribution of the assets by entering into a Termination Agreement, which is recognised under the Property (Relationships) Act. For a Termination Agreement to be valid and enforceable each party must obtain independent legal advice in relation to the Agreement and the Solicitors giving that advice



need to sign a Certificate of Independent Advice, which is attached to the Agreement. There is not need for a Court to turn that Agreement in Orders.

**5. Who will make an agreement?**

At Bateman Battersby we can prepare a Termination Agreement outlining how assets will be distributed. We can then forward this Agreement to your ex-partner or your ex-partner's solicitor.

**6. What if no agreement is reached?**

If no Agreement can be reached, then regrettably one of the parties may need to file a Statement of Claim in a Court. In New South Wales, a Statement of Claim may be filed in the Local Court, the District Court of New South Wales or the Supreme Court of New South Wales. Which Court is to be used will depend on the amount claimed. Each of those Courts has monetary limits. Once a Statement of Claim has been filed, then the other party will need to file a Notice of Grounds of Defence, and possibly a Cross Claim.

**7. What will happen after I file an application?**

Generally, once a Statement of Claim has been filed, a matter will be listed in a Court for a "first return date" and then a Judicial Officer will make directions as to filing of a Notice of Grounds of Defence (if it has not already been filed) and/or for filing of Affidavit material. The matter will then be listed for a further Mention to ascertain whether there has been compliance with the previous directions made. Ultimately, a Hearing date will be allocated for the matter to be determined by the Court.

**8. What if no settlement is reached?**

Unfortunately, if no agreement is reached, then a Judicial Officer will determine the outstanding issues. This can involve much time and can be an expensive process.

**9. How can Bateman Battersby assist me in my Defacto property settlement?**

Oliver Hagen and his team have vast experience in handling property settlements. We can advise you on the likely distribution of the assets and liabilities of the relationship. We can also obtain all relevant information pertaining to the assets and liabilities. We can also negotiate with your ex-partner or their legal representative and, if the matter does not settle, can appear for you in Court. If any agreement or Court Orders involve transfer of real estate between either party, we can prepare the necessary documents.

*If you would like further information, or require assistance, please contact us on (02) 4731 5899 or send us an email by clicking on the 'Contact Us' page on our website.*