



## 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 if the relationship ended prior to March 2009. If a de facto relationship ends after March of 2009 it may be dealt with under the Family Law Act in either the Family Court of Australia or the Federal Circuit Court. Relationships that are dealt with under the Family Law Act must be de facto relationships. Domestic relationships may still be dealt with under the New South Wales Property (Relationships) Act.

The Court will make Orders adjusting property that it considers “just and equitable”. When considering what is just and equitable under the New South Wales Property (Relationships) Act 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.
- (iii) In addition, the Court will also need to be satisfied that:
  - (a) At least one of the parties was in New South Wales when the Application was made; and
  - (b) That if both parties were resident in New South Wales for a substantial period of their relationship or substantial contributions were made in New South Wales by the Applicant.

Under the Family Law Act the Court will consider the property distribution in de facto relationships as follows:-

- (a) Geographical considerations – that is, where either or both of the parties to a de facto relationship ordinarily resident in a participating jurisdiction and to that extent where both parties ordinarily resident in a participating jurisdiction and to that extent where both parties ordinarily resident in a participating jurisdiction during at least a third of the de facto relationship or if applicant has made a substantial contribution in relation to the de facto relationship.



- (b) The Court to be satisfied that the period of the de facto relationship was a total of two years or there is a child of the de facto relationship or that a party to the de facto relationship made substantial contributions and a failure to make an order or declaration result in serious injustice or the relationship registered under the prescribed law of a State or Territory.

## **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 lived, any investment properties, motor vehicles, savings accounts, shares and other items. De facto relationships dealt with under the New South Wales Property (Relationships) Act do not include superannuation as this is not considered property, however, superannuation is taken into account as a financial resource. However, superannuation it will be treated as an asset of a relationship under the Family Law Act.

## **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 or a Financial Agreement recognized under the Family Law Act. For a these agreements 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 Certificates of Independent Advice which are either attached to the Agreement or exchanged between the parties. There is no 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 commence proceedings in Court. For a de facto relationship or domestic relationship under the New South Wales Property (Relationships) Act you commence proceedings by filing a Statement of Claim either in the New South Wales Local Court, District Court of New South Wales or the Supreme Court of New South Wales. Which Court is to be used will depend upon 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. If no agreement is reached for a de facto relationship that ends after March 2009 then you may commence proceedings by filing an Initiating Application either in the Family Court of Australia or the Federal Circuit Court.

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

Generally, under the Property (Relationships) Act, 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. Your matter may also be directed to mediation. Ultimately, a Hearing date will be allocated for the matter to be determined by the



Court. Similarly, under the Family Law Act, once an initiating Application has been filed the other party (Respondent) will generally file a Response. The parties will attend a first return date at Court and then maybe referred to a Conciliation Conference with a Registrar of the Family Court to attempt to mediate and settle the matter.

## **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.*