



What are my legal rights in a breakdown of a de facto relationship?

In Australia, if you are in a de facto relationship, you generally have the same rights as a married couple when it comes to maintenance and the division of property. The same applies for same sex de facto couples. But simply living with someone and being in a sexual relationship with them, does not of itself mean you are in a de-facto relationship.

What is a De facto Relationship?

Under the Family Law Act, a person is in a de facto relationship with another person if:

- the persons are not legally married to each other; and
- the persons are not related by family; and
- having regard to all the circumstances of their relationship, they have a relationship as a couple who are living together on a “genuine domestic basis”

What constitutes a “genuine domestic basis”

Whilst the answer to this depends on the individual circumstances of each couple, some of the matters that the Family Court will consider are:

- how long you have been in a relationship, and whether it is of a sexual nature;
- how much financial dependence or independence exists between you, or if you or your partner financially support one another;
- whether you have joint assets;
- to what extent you have a mutual commitment to a shared life;
- the care and support of children;
- the reputation and public aspects of the relationship.

Can a de facto relationship exist if the parties are not living together?

The Family Court has recognised that parties to a relationship can be married to someone else, and also be in a de facto relationship. Even if each of you have your own place, and only stay over a few nights a week, you could still be considered in a de facto relationship. On the other hand, in a recent case of Weldon & Levitt, the Family Court decided that a couple who had 2 children together, but lived in the same house for less than one of the 16 years they had known each other, were not in a de facto relationship. The net effect is that the Family Court is required to look at all



of the circumstances, including statements made by the parties to government authorities for social security and lenders for loans, and assess whether in all those circumstances the persons are a couple living together on a genuine domestic basis.

Can I get financial orders splitting property if we separate?

The Family Court can only make orders in respect to a division of property (including splitting of superannuation) if it is satisfied that a de facto relationship exists in the first place, and then only if one of the following criteria exists:

- You have been in the de-facto relationship for at least two years; or
- You and your partner have children; or
- Your relationship is registered under a prescribed law of a State or Territory; or
- When assessing property or custody claims, it is recognised that significant contributions were being made by either you or your partner, and the failure of the Court to issue an order would result in a serious injustice.

How do you register your de facto relationship?

The NSW Relationship Register allows adults who are in a relationship or a couple, regardless of sex, to apply for registration of their relationship provided at least one of them lives in NSW. A relationship cannot be registered if either person is under 18, or is married, is in another registered relationship or if they are related by family. The couple does not have to live together to register their relationship. A statutory declaration must be lodged with the application, and when the relationship is registered a certificate is issued, much like a marriage certificate.

Am I entitled to maintenance?

You can also apply for maintenance from your de facto partner if you cannot adequately support yourself. Whether such an application is successful will depend on your needs and your ex-partner's capacity to pay and consideration will be given to the following matters:

- your age;
- your incomes, property, and financial resources;
- your ability to work;
- a suitable standard of living; and
- if the relationship has impacted on your ability to earn an income.

Ultimately though, unless your partner is reasonably able to pay maintenance in circumstances where you are unable to support yourself, he/she will not be required to pay maintenance.

Beware the Time Limitation Period

Importantly, de facto parties need to be aware that, whilst there is no time limit on how soon after separation de facto parties can apply for property splitting orders, if an application for property splitting orders has not been made before the expiration of two years of the date of separation, de facto parties are precluded from bringing an application, without the leave of the Court.



If you have any query regarding the breakdown of a relationship, including division of property or any other family law issue, please contact one of our experienced Family Lawyers [Oliver Hagen](#) or [Ken Gray](#) on (02) 4731 5899 or email us at familylaw@batemanbattersby.com.au.