

DEVELOPMENTS IN PROPERTY SETTLEMENTS FOR DE FACTO RELATIONSHIPS

February, 2009

New Laws:

On 1 March 2009 the law for property settlement in de facto relationships will change completely. The changes are the most dramatic to ever effect de facto couples and will have a profound effect on the outcomes that will be able to be achieved.

Date of Separation:

A couple's date of separation will determine which law applies to them, i.e. whether before 1 March or after. Under the new Laws it will be possible for a de facto relationship to exist even if one of the parties is legally married to someone else or is in another de facto relationship. Also, the new Laws will not differentiate between opposite sex and same sex couples in terms of bringing a Court Application seeking Orders for property division in the Federal Magistrates Court or the Family Court ("The Federal Courts").

Courts:

The Federal Courts deal with property settlement matters upon the breakdown of relationships much more commonly than the State Courts, such as the Supreme and District Courts. As each State has previously had its own approach to property settlement on the breakdown of de facto relationships, it is hoped that the new Laws will provide for a consistent and uniform approach by the Courts.

Old Laws:

Previously on the breakdown of a de facto relationship, if the parties were unable to resolve a dispute regarding both, children and property, it was possible that proceedings would need to be commenced in relation to two different Courts (i.e. children's matters in the Federal Courts and property matters in the State Courts). The new laws will have the potential to reduce the legal costs for parties in this position, by giving the Federal Courts the power to decide both matters, with one Application.

Big Differences:

The new Laws will make it possible for people in de facto relationships to apply to the Federal Magistrates Court or the Family Court for Orders to seek Orders in relation to Superannuation interests, Spouse Maintenance and other financial matters. Such claims were previously only possible where the parties had been legally married.

Parties to a de facto relationship that separate before the commencement of the new Laws may choose whether the new Laws will apply to them. However this choice must be unconditional, in writing, and signed by the parties. In order for the choice to be valid, both parties must receive independent legal advice before the choice is made, and the legal practitioner must sign a statement confirming that advice was given as to the advantages and disadvantages of making the choice. If both parties do not consent, the new Laws will not apply.

Contact Us:

There may be other advantages and disadvantages to the new Laws which may apply to your unique circumstances. ACT NOW! For further Specialist Family and Relationship Law advice contact Michael Lynch Family Lawyers on telephone (07) 3221 4300.