

PROPERTY SETTLEMENTS IN DE FACTO RELATIONSHIPS

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There is a lot of confusion surrounding how property settlements are dealt with in defacto relationships following a relationship breakdown.

The law is complex and therefore there is no substitute for Specialist legal advice however this Article by Michael Lynch, of Michael Lynch Family Lawyers will identify some of the issues, i.e:

- The law that applies for property settlements in defacto relationships is determined by each State. The law that applies for property settlements in marriages is governed by the Federal Government in the Family Law Act.
- There are some significant differences in the law between marriages and defacto relationships, e.g. (in Queensland) in defacto relationships superannuation is not part of the property that can be divided and spouse maintenance is not available to defacto couples.
- In Queensland, a defacto couple is defined as being a 'genuine domestic relationship', where:
 - o The parties have been living in a defacto relationship for at least 2 years; or
 - o There is a child of the defacto relationship (in which case, no cohabitation period is required).
- The criteria for the division of property under the Queensland legislation is similar to the criteria set out under the Family Law Act i.e it considers financial and non-financial contributions made by each party, as well as a spouse's current and future needs.
- The Queensland legislation enables defacto couples who do not want to be bound by the legislation to enter into a Recognised Agreement, this is an enforceable agreement similar to a Pre-Nuptial Agreement.

There have been discussions between the State and Federal Governments for many years about the States referring their powers for defacto relationship property settlements to the Commonwealth.

On the 1 March, 2009 the Family Law Act was amended to enable it to determine property settlements for defacto couples where they have separated after 1 March 2009. South Australia and Western Australia have not referred their State powers and therefore couples in those states do not come within the Family Law Act. The definition of a defacto relationship (under the Family Law Act) is very similar to the definition in the Queensland legislation.

For further Specialist Family and Relationship Law advice contact Michael Lynch Family Lawyers on telephone (07) 3221 4300. To receive a free copy of their monthly newsletter visit www.mfl.com.au and join on-line.