

WHAT IS A DEFACTO RELATIONSHIP?

September, 2009

The question of 'what is a defacto relationship?' has received increased attention since the amendments to the *Family Law Act* on 1 March 2009, introducing the defacto property settlement legislation. Our February "Close-up" article entitled 'Developments in Property Settlements for defacto relationships', details the changes.

This article however, will look specifically at who the new legislation applies to by looking at, what is a defacto relationship?

DEFINITION:

A defacto relationship can exist between two persons of different or same gender. According to the *Family Law Act*, (s4AA) a person is in a defacto relationship with another person where:

- *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 living together on a genuine domestic basis.*

In many relationships, determining whether the couple is living together, 'on a genuine domestic basis' is not always clear and there have been cases where couples have been found to not be residing together in the same home, however are still held to be in a defacto relationship.

SPECIFIC REQUIREMENTS:

A defacto relationship exists where there is a "genuine domestic relationship" and one of the following exists:

- the parties have been in a defacto relationship for at least 2 years; or
- there is a child of the relationship; or
- it would be unjust not to recognise a defacto spouse's financial or non-financial contribution.

INDICATORS:

There are factors that the Court can look at to determine whether a defacto relationship exists. According to the *Family Law Act*, these can include any or all of the following:

- the duration of the relationship;
- the nature and extent of their common residence;
- whether a sexual relationship exists;

- the degree of financial dependence or interdependence and any arrangements for financial support between them;

- the ownership, use and acquisition of their property;

- the degree of mutual commitment to a shared life;

- whether the relationship is or was registered under a prescribed law of a State or Territory as a prescribed kind of relationship;

- the care and support of children (if there are any);

- the reputation and public aspects of the relationship.