

Legalquotes News

PROVIDED BY RANKIN NATHAN LAWYERS

WILL WE TIE THE KNOT? PROPERTY RIGHTS OF DE FACTO COUPLES

Many people believe that today the difference between living in a de facto relationship and being married is essentially a piece of paper. This is not necessarily the case. When it comes to the division of property in the event of a breakdown of the relationship there are still significant differences in the matters that are considered.

In New South Wales the division of property at the end of a de facto relationship is dealt with under the Property (Relationships) Act (NSW) 1984. When considering how to divide property the Court must do what seems just and equitable having regard to:

- The assets and liabilities currently owned by both parties, regardless of in whose name the assets are owned.
- The contributions of a financial and non-financial nature each party has made towards the acquisition, conservation and improvement of the assets.
- The contributions of a homemaking and parenting nature each party has made towards the welfare of the family including each other or a child of the relationship.

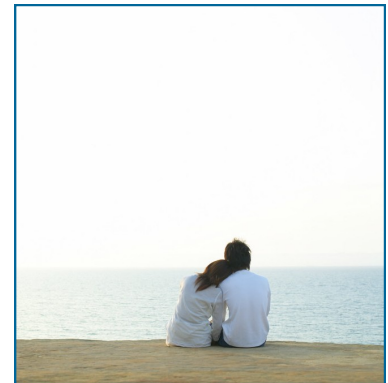
An additional requirement before the Court can consider a division of property is that the parties must have lived together in a de facto relationship for

not less than two years. However, if the relationship was for less than two years then the Court may still consider a division of property where:

- There is a child of both parties;
- There have been significant contributions, of a financial or non-financial nature, made by one or both parties towards the acquisition, conservation and improvement of the assets or the welfare of the family; or
- One party has retained the care of a child of the other party.

For married couples the division of property is dealt with under the Family Law Act (Cth) 1975. In the event that a marriage breaks down the Family Court can order a division of property regardless of how long the parties have been married. The Family Law Act also provides for different factors to be considered when deciding how property should be divided. One major difference is that the Family Law Act provides for a consideration of both parties' needs for the future; taking particular account of any difference in income and earning capacity, health difficulties, the care of children, the likelihood that Child Support will be paid and various other matters.

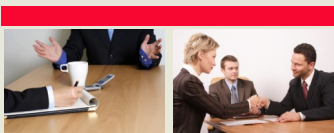
Whilst at present the division of property for de facto couples is dealt with in a very



different way than that of married couples, significant steps have been taken towards reforming the de facto property system. This has involved most States, including New South Wales, seeking to refer the power to make laws for de facto couples to the Commonwealth. It is anticipated that the current Federal Government will formally accept this referral of power and introduce legislation which will allow the Family Court to deal with the division of property in the event of the breakdown of all relationships, regardless of whether couples are married or not.

For the moment however, there remain two very distinct systems for dividing property in the event of the breakdown of a relationship, where the determining factor is THAT piece of paper.

If you need advice about your property settlement, please call 1300 727 813, to make an appointment with one of our experienced family lawyers.



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