



## De facto relationships

### Am I in a de facto relationship?

A de facto relationship is a relationship of two people who live together on a genuine domestic basis who are not married or related by family.

The criteria used to determine whether two people are in a de facto relationship include:

- The duration of the relationship - Generally, a relationship must have existed for at least two years before a party may apply under the *Family Law Act* for property settlement or maintenance. However, if there is a child of the relationship or other relevant circumstances exist, there may be an exception to this requirement.
- Whether you live in the same residence together - It is a common misconception that you need to live in the same house as your partner before your relationship can be considered a de facto relationship. While generally this is the case, it may be possible for a de facto relationship to exist even without a shared residence for some or all of the relationship.
- Whether a sexual relationship exists.
- The degree of financial dependence or interdependence between you and your partner and whether there are any arrangements for the financial support of the other.

- Whether you own any property with your partner or have any joint bank accounts or other finances.
- How you and your partner hold yourselves out to others. That is, how you conduct yourselves in public, whether other people know about your relationship and whether others consider you to be a couple.
- Whether there are any children of the relationship.

No one factor or circumstance considered on its own will determine whether or not two people are in a de facto relationship. When a court is called upon to determine whether a de facto relationship exists between two people, it will consider all of the factors and circumstances, and give such weight to each factor as is appropriate. There is no precise formula that is used by the courts to work out whether a de facto relationship exists, and the court will look at all of the facts.

### Do the de facto laws apply to me?

If you are in a de facto relationship and finally separated on or after 1 March 2009, the de facto laws automatically apply to your relationship.

If you were in a de facto relationship and separated prior to 1 March 2009, you will need to seek advice under the previous laws relating to you, such as Part 19 of the *Property Law Act 1974* (Qld), unless both

you and your partner choose to have the de facto laws apply to you. If you wish to make this choice, you must jointly inform the court of this choice in writing, after each of you has obtained independent legal advice and received a signed certificate from each of your solicitors to confirm that the required legal advice has been provided.

The decision whether to choose to have the de facto laws apply to you will depend upon your personal circumstances. This choice is important, as the direction that you choose may benefit or disadvantage you significantly. Therefore, it is important that you obtain legal advice as soon as possible to ensure that this difficult time is not made even more difficult by setting off in the wrong direction.

### What is the time limit to apply?

If you wish to make a claim for property settlement or maintenance, you must apply within two years of the date that your de facto relationship ended.

Only in limited circumstances will the courts grant leave for you to make an application after the end of this period.

For more information, please contact: [contactus@hopgoodganim.com.au](mailto:contactus@hopgoodganim.com.au) or visit [hgprivate.com.au](http://hgprivate.com.au)