



Dealing with property and assets after a de facto relationship breakdown

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Casual and recent commentary from our High Court has created confusion and uncertainty around de facto relationships. Just because you are not living under the same roof or bound by a certificate of marriage does not necessarily mean you are not in a de facto relationship. Determining if you are a de facto couple or not has a significant impact on [family law property settlement](#). This blog explores:

how to determine if you're in a de facto relationship or not; and

if you are in a de facto relationship, how property is treated if that relationship ends; and

how you can protect your assets if you're in a de facto relationship.

Am I in a de facto relationship or not?

The *Family Law Act 1975* (Cth) ('the Act') deems a de facto relationship to exist if two people are not legally married and are in a relationship as a couple, living together on a "genuine domestic basis".

How does the Court decide if a de facto relationship existed?

The mutability and dynamic nature of human relationships allow a Court to give weight to any appropriate matters it sees fit in determining whether a de facto relationship has existed, including:

the duration of the relationship;

the extent and degree of financial separation or dependence between the couple;

the nature and extent of the couple's living situation and common residence/s;

the ownership, use and acquisition of property;

whether a sexual relationship exists;

the degree of mutual commitment to a shared life;

the care and support of children; and/or

the reputation and public aspects of the relationship.

The above factors are not exhaustive. They are a guide for Courts in considering the context of each individual matter and circumstances.

You can read more about de facto relationships in our blog, ["Are we just dating or are we in a de facto relationship?"](#)

Not living together, but together?

Since COVID, locked borders and flexible working arrangements, we now have "different living arrangements". In the matter of [Fairbairn & Radecki](#), at paragraph 33, the Court considers whether cohabitation is not necessary to be determined as "living together". Rather, "living together" should be considered as "shared life".

In this case, the High Court noted that the phrase "living together" must be construed to take into account the "*many various ways in which two people may share their lives together in the modern world*".

People could be deemed as "living together" and enjoying a shared life, without necessarily being under the one roof, for a number of reasons. This could be health and work arrangements forcing people to be geographically separated.

The Court looks at whether people are "sharing life as a couple".

This has shifted away from the focus of a "shared address" being necessary to determine the existence of a de facto relationship.

Has a de facto relationship ‘broken down’?

“Breakdown” is synonymous with the ‘end’ or ‘break up’ of what had been an enduring emotional bond.

The Act does not provide an exhaustive or substantive decision of the term “breakdown”. Therefore, the statutory interpretation of what constitutes a “breakdown” of a de facto relationship relies heavily on case law.

The most recent High Court decision of [Fairbairn v Radecki \[2022\]](#) made it clear that there is no relevant distinction between the breakdown and end of a relationship, and these terms can be used interchangeably.

If you believe your de facto relationship has broken down, speaking with our family lawyers at first instance will provide the necessary guidance and support to ensure your rights and financial situation are protected.

Seeking property orders or de facto maintenance after a relationship breakdown

De facto relationships that have broken down require that an application for property orders (to [deal with property settlement](#)) is made within 2 years following *the* end of the de facto relationship.

De facto maintenance (a type of [spousal maintenance](#)) is financial support paid by one party to a de facto relationship that has broken down, to their former de facto partner in circumstances where they are unable to adequately support themselves.

The Court can only make a de facto maintenance order if your de facto relationship meets certain jurisdictional requirements. De facto maintenance must be applied for within two years of the breakdown.

The Court considers the needs of the applicant and the respondent’s capacity to pay, greatly considering the age, health, income, property and financial resources, capacity to work, and what is a suitable standard of living of both parties.

How do I protect my assets and property in a de facto relationship?

There are steps that you can take to protect your assets and property that you bring into a de facto relationship.

[Binding Financial Agreements](#) (‘BFA’) are written financial agreements in family law that set out how your assets will be divided in the event of separation. A BFA covers both de facto relationships and marriages. They are often colloquially referred to as prenuptial agreements.

A BFA can be entered into before a relationship, during a relationship and even after a relationship ends. Although often an overwhelming and daunting idea, a BFA is the best way to protect your property and assets when entering into a relationship.

Meillon and Bright Director [Matthew Kinder](#) has worked with many clients to provide favourable outcomes through well-drafted financial agreements.

Get in contact with a family lawyer

Obtaining legal advice will help you better understand your rights and responsibilities, particularly given the complex interaction of family law with de facto relationships.

At Meillon & Bright, our family lawyers will work with you to advise on, and draft binding financial agreements to protect your rights and financial future.

If you think your relationship may be considered a de facto relationship and you would like further information about property settlement, de facto

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.