

# DE FACTO RELATIONSHIPS



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## WHEN IS A RELATIONSHIP RECOGNISED BY LAW?

A relationship recognized by law is one where two adults live together as a couple. It is not enough just to live in the same house, or even to sleep in the same bed. To have a recognized relationship you must both intend to live together as a couple.

Same-sex relationships and opposite-sex relationships are treated in the same way, except in the areas of marriage and adoption (see below).

In some situations, there is no set time that you must live with someone before your relationship is recognized. In other situations, partners may not be entitled to certain rights unless they have lived together for two years, three years, five years, or have a child together.

For some legal purposes, a formal declaration from a court is required before the relationship can be recognized. For most legal purposes, partners do not have to take any formal step to have the relationship recognized. Once the relevant time for living together is met, the relationship is recognized automatically. If there is doubt about whether a relationship can be recognized, a court can be asked to make a declaration on this.

## IS A DE FACTO RELATIONSHIP THE SAME AS A MARRIAGE?

In some areas of law, a de facto relationship is treated like a marriage, where there is no time requirement for recognizing the relationship, and in other areas it is not. There is no time requirement for recognizing a de facto relationship for:

- making agreements about property
- Legal Aid
- pensions and benefits
- getting a restraining order against a violent partner
- court orders for care of children
- child support
- income tax deductions.

De facto partners may be entitled to the same rights as married persons when:

- one partner dies without a will
- one partner leaves the other partner out of their will
- superannuation death benefits are being claimed in relation to a State superannuation scheme
- a partner is ill and needs someone to make medical decisions for them
- organ donation is being considered.

In these situations, the partners must have been together for three years, or for periods totalling three years over four years, or have a child together.

If the relationship was for less than three years, either of the former partners may seek a declaration from the court recognizing the relationship on the basis that they were living together in a close personal relationship and that the interests of justice require that a declaration be made. This application is made under the Family Relationships Act 1975 (SA), which sets out what the court must consider when making its decision.

## PROPERTY DISPUTES

Applications can only be made for the court to resolve a property or maintenance dispute if the relationship existed for at least two years or there is a child of the partners, or one of the partners has made substantial financial or non-financial contributions to their property or as homemaker or parent and serious injustice would result to that partner if an order was not made. A claim for property or maintenance must be made within two years after the relationship ends, unless there are special reasons. Property matters between de facto partners are dealt with in the Family Law Courts under the same principles as for legally married partners. A former partner can also seek maintenance for themselves from the other partner.

It is not true that if you live with someone they are automatically entitled to half of everything you own. See our booklet *Family Law and You* for more information.

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## PROPERTY AGREEMENTS

A couple living or intending to live together can draw up a binding financial agreement saying how property will be divided should the relationship end. A binding financial agreement can also be made after the relationship has ended. To be binding, agreements must be in writing and signed by both partners. Each partner must get independent legal advice (each partner must have their own lawyer). Each lawyer must sign a statement stating the required advice was given and a copy of the statement must be sent to the other partner. In some circumstances, a court may set aside or vary an agreement, for example if there has not been full disclosure, or there has been fraud or unconscionable conduct.

## DEBTS

In any relationship, there is no rule that a partner is responsible for the debts of the other. If you both sign a contract, or if an account is in both names, then you are both responsible for any payments. Beware of signing as a guarantor for a partner as you may become responsible for the debt.

## PROPERTY IN JOINT NAMES

Disputes can be minimized by not putting property into joint names unless each person contributes equally, by keeping a record of who pays for what, and by keeping receipts. Avoid making statements that property is 'ours' or 'shared' unless that is your real intention. Give special thought to your home. If the home is in joint names, the other partner will own it all if you die first. You cannot make a will leaving your share to someone else. This may not be what you want, especially if you have children from another relationship. There is another way of putting a house in both names, called 'tenants in common'. If you do it this way, you can leave your share of the house to someone else in your will, and you can sell your portion of the property. Get legal advice if you are not sure which type of ownership will suit you best.

## CHILDREN

Children have the same rights whether their parents are married or not. They are entitled to be cared for and to be supported. When a parent dies, children are entitled to share in the property if there is no will, or to challenge a will that is unfair.

It is best if separated parents can decide together how to care for their children. A family relationships counsellor can often help you reach agreement. If you cannot agree, a Family Law Court can make orders about the care of children. Family Law Court orders for the children of de facto couples are decided in the same way as if the parents were married. See our booklet *Family Law and You* for more information.

If a child has been present during the relationship, a person who is not the parent of the child may wish to continue to spend time with,

communicate with or care for the child. If agreement cannot be reached, the person is able to make an application for a parenting order through the Family Law Courts. The person must be able to show they are concerned with the care, welfare and development of the child. In determining whether to grant a parenting order, the court must put the interests of the child first. It will consider a variety of issues, including maintaining any established arrangements, the relationship between the applicant and the child, the wishes of the child and the child's safety. Former de facto partners can access family mediation services to negotiate matters concerning children.

## MARRIAGE

Under the Marriage Act 1961 (Cth) it is not possible for same-sex couples to be legally married in Australia, nor may an Australian court make a declaration of validity in relation to a same-sex marriage entered into overseas.

## CHILD SUPPORT

The parent who cares for a child is entitled to child support payments from the other parent. If there is a dispute about who is the father of the child, seek advice about parentage testing procedures. A person who starts a de facto relationship with a person who already has children does not have a legal obligation to support those children except in special circumstances. However, Centrelink payments may be affected if you live together. If you receive Centrelink payments, Centrelink must be told of the relationship as soon as it starts.

A separated parent from a same-sex relationship can apply for child support from a co-parent who is recognized as a parent under the Family Law Act 1975 (Cth). Centrelink may also require parents to apply for an assessment of child support payable by the co-parent. For help in making an application for child support, contact the Child Support Unit at the Legal Services Commission, telephone: 8111 5576.

## REPRODUCTIVE TECHNOLOGIES

In order to be eligible for artificial fertilization procedures, de facto partners must have been living together continuously for three years, or, during the immediately preceding four years, for periods aggregating at least three years. There is no time requirement for married couples.

While all infertile women can obtain fertility treatment, fertile same-sex partners cannot access reproductive technology in South Australia. In other words, lesbian women who are not medically infertile cannot access treatment for artificial insemination through a licensed clinic.

## ADOPTION

Both married and opposite-sex de facto partners must have been together for five years to be eligible to adopt. Same-sex partners are not able to adopt under South Australian law.

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