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LawTalk Blog



Separated from your de facto? Can you claim against their property?

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De facto relationships and property settlement is a poorly understood area of the law and one in which many people would get value from a better understanding. The difficulty probably arises from the fact that there was a change to this area of law in South Australia in 2010 which changed the time required to live together before you can make a claim. There are also different time limits in other areas of law to do with estates and taxation. This blog is focusing simply on making a claim for property against a de facto partner.

The first requirement is that the parties were in a de facto relationship. This itself can be an area of significant dispute. If there is a dispute as to the existence or not of a de facto relationship then legal advice will be essential as it is a complicated area of the law. This is due to the fact that there are nine considerations that need to be looked at when assessing whether the parties are in a de facto relationship. A de facto relationship is a relationship between two people who live together on a genuine domestic basis.

To determine whether they are in a de facto relationship we look at:

1. The duration of the relationship.
2. The nature and extent of common residence.
3. Whether or not a sexual relationship exists.

4. The degree of financial dependence or interdependence and any arrangements for financial support between them.
5. The ownership, use and acquisition of property.
6. The degree of mutual commitment to a shared life.
7. The care and support of children.
8. The performance of household duties.
9. The reputation and public aspect of their relationship.

None of those circumstances above are absolute requirements, for example a sexual relationship does not have to exist to be in a de facto relationship.

A de facto relationship can be between parties who are the same sex and can be between two parties even if one of them is married to another person or one of them is in a de facto relationship with another person.

You can bring a claim for a de facto property settlement if you have lived in a de facto relationship:

1. for two years; or
2. you have a child or children together; or
3. you have made significant contributions to the relationship.

It is important to note the most well known requirement, namely that of living together for two years is not the only requirement and parties can have lived together for less than two years and still make a claim for property settlement if they have a child together or have made significant contributions to the relationship.

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to Australian Federal legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.