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LawTalk Blog



We were only in a short relationship. Can I still make a claim for property settlement?

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A de facto relationship for the purposes of the *Family Law Act* (“the Act”) is a relationship between two people if they:

- are not legally married;
- are not related by family; and
- when considering all the circumstances of their relationship, have a relationship as a couple living together on a genuine domestic basis.

There are a number of considerations used to determine if two people are living as a couple on a genuine domestic basis. For a full consideration of these issues, see our article [“Separated from your de facto? Can you claim against their property?”](#)

Under the Act, the Court may make an order for property settlement in a de facto relationship if one of the following is satisfied:

1. The period of cohabitation of the de facto relationship is at least 2 years; or
2. There is a child of the de facto relationship; or
3. A party to the de facto relationship made a substantial contribution and a failure to make the order would result in serious injustice; or
4. The de facto relationship was registered under a prescribed law of a State or Territory (not available in South Australia).

The first two criteria are relatively straight forward and often simple to prove. Issues can arise in de facto relationships of a short duration (less than two years). In these relationships an order for property settlement can still be made if one party to the de facto relationship made a "substantial contribution".

What is a substantial contribution?

Substantial contributions for this purpose of the Act can be a reference to either financial contributions or non-financial contributions. For example, not only will the contributions to the purchase of a house be considered (financial contribution), but the homemaking and parenting contributions (non-financial contributions) can also be considered as a type of contribution.

"If the court deems that a substantial contribution has been made, the court will also be required to determine whether or not a failure to make a property settlement order would result in a serious injustice. "

Where an issue may arise however, is how the court will determine that a particular contribution is substantial. The court's approach is that what will be deemed as a substantial contribution will be analysed as a subjective test. This means that every case is required to be individually analysed.

The starting point comes from a decision of the Family Court of Western Australia in *V &K* [2005] FCWA 80, where it was deemed that the word "substantial" meant something *"exceptional, beyond the usual or normal"*.

Each specific case is required to be analysed on the basis that what might be considered a "substantial contribution" in one case, may not be considered a "substantial contribution" in another case."

If the court deems that a substantial contribution has been made, the court will also be required to determine whether or not a failure to make a property settlement order would result in a serious injustice. If the court is satisfied that a serious injustice would result, then the court is required to make an order for a property settlement.

If you want to make a claim for a de facto property settlement, we recommend that you seek legal advice from a lawyer experienced in Family Law.

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