

# DE FACTO RELATIONSHIPS IN FAMILY LAW

*what does it mean?*



*If there is a de facto relationship, that does not automatically mean you have a family law claim for a financial settlement.*

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FAMILY LAWYER

**It is commonly assumed that in family law, if you live together you are automatically considered to be in a “de facto relationship”.**

However, that is not the case and living with someone else does not always mean that a de facto relationship exists.

So what is the meaning of a de facto relationship for family law purposes?

Firstly, you cannot be legally married to be a de facto couple – the Family Law Act 1975 has separate provisions for married couples and property claims.

Secondly, you cannot be related by family.

Thirdly, and the point that is most likely to be contentious, you need to have “a relationship as a couple living together

on a genuine domestic basis” (section 4AA(1)(c) of the Family Law Act 1975), taking into account of the circumstances of the relationship.

Living together, on its own, does not meet the definition.

If there is a dispute about whether a de facto relationship exists, a number of factors are taken into account to determine the nature of the relationship, such as:

- The relationship – its length, the degree of mutual commitment to a shared life, where parties lived and whether there was a sexual relationship
- How parties financially supported each other and whether property and assets were owned or used jointly or individually
- Whether the relationship is or was registered under particular laws

- \* The care and support of children, and
- How the relationship was portrayed to other people both in public and within the family

No one of these factors necessarily decides the issue on its own. The recent appeal judgement of *Denys & Kellett [2022] FedCFamC1A 223* highlights that the test is whether in having regard to all of the circumstances of the relationship, the parties were living together on a genuine domestic basis.

If there is a de facto relationship, that also does not automatically mean you have a family law claim for a financial settlement.

The relationship needs to have broken down. You also need to meet one of the four “gateway” criteria:

- The period or total periods of

the de facto relationship is at least two years

- There is a child of the relationship
- The relationship is or was registered under a prescribed law of a state or territory, or
- Significant contributions were being made by a party and a failure to make an Order would result in a serious injustice

There are other jurisdictional requirements and an application must be made within two years from the breakdown of the relationship, otherwise you need to apply for the Court’s permission to proceed out of time, which is not guaranteed to succeed. Early advice on the status of your relationship and whether you can make a claim is important.

Charlotte Brancatisano is a family lawyer at Wightons

Lawyers. If you require advice about whether or not you are in a de facto relationship and your rights under the Family Law Act 1975, contact our office on 5221 8777 to make an appointment today with Charlotte.

This article is general information only and is not legal advice or a substitution for such advice.



**Wightons family lawyer Charlotte Brancatisano.**

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