



DEFACTO RELATIONSHIPS- IN QUEENSLAND

Property Law Act

Most property disputes between defacto couples are covered under this Act, on the basis that the parties separated on or after 21st December, 1999.

Prior to this date, a defacto spouse generally had to rely on the law of trusts to establish a claim on property that was not registered in his or her name. The Act is similar to the Family Law Act provisions dealing with property settlement for married couples.

However, if a defacto couple resided outside Queensland or had property outside Queensland, then interstate laws (different from Queensland laws) may apply.

If the parties separated before 21st December 1999, the Property Law Act may not apply and judge made law (called “common law” or “equity”) may apply.

In either of these cases the result may be significantly different from what a person may be entitled to under the Property Law Act.

Defacto couples who are covered by the Property Law Act are also covered by judge made law and if a claim is brought in court, both claims may be brought. The courts hearing such a claim are the Supreme, District or Magistrates Courts, not the Family Court.

Who is a defacto spouse?

Both heterosexual and homosexual couples are included.

Flat mates are not normally considered to be in a defacto relationship.

What happens with property upon separation?

Upon separation, a defacto spouse can apply to a State Court to make a property adjustment if one of the following three matters can be proven:

1. The defacto spouses have lived together in a defacto relationship for at least 2 years; or
2. There is a child of the defacto relationship who is under 18 years of age; or
3. Where serious injustice would result from failure to recognize a defacto spouse’s financial or non-financial contribution.

Two year time limit

An application to the Court for a property adjustment must be made within 2 years of the end of the relationship, unless the Court gives permission to apply after that time.





Maintenance

The State Government did not amend the legislation to allow a defacto spouse to claim spousal maintenance from the other defacto spouse. However, the pre-existing law does provide that a female defacto spouse is entitled to claim maintenance for herself for the period surrounding the birth of any child of the relationship.

Child maintenance (now called “child support”) can still be payable pursuant to other legislation. The law stays the same whereby parents of children from a defacto relationship are still required to pay child support for the children to assist with their upkeep.

There is some judge made law allowing the equivalent of maintenance in some circumstances.

Children from a defacto relationship

The Family Court of Australia can deal with all disputes relating to children of a defacto relationship. The same rules relating to children born in wedlock apply to children born out of wedlock.

Cohabitation and separation agreements

The legislation permits defacto spouses to contract out of the provisions of the Act.

It is still a good idea for couples entering into a defacto relationship to have an Agreement drawn up setting out how any property is to be divided between them, should their relationship come to an end. The Court will enforce such an agreement unless the Agreement results in a “serious injustice” or “impracticability”.

If the agreement is entered into before or during a defacto relationship it will be known as a “Cohabitation Agreement”. If an agreement is entered into in contemplation of ending the relationship or after the relationship has ended, it will be known as a “Separation Agreement”.

Restraining orders

A defacto spouse can obtain an order restraining their partner from assaulting or abusing them under The Domestic and Family Violence Protection Act.

Should a defacto spouse make a will?

Married or not, everyone over the age of 18 years should make a will.

Contact us today and we will help you prepare a will and/or power of attorney.

Are you and your partner covered if anything happened to either of you? Please see our flyer on Wills and Powers of Attorney





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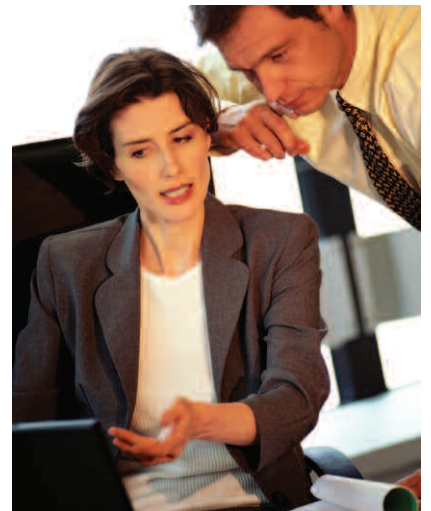
As the preferred solicitors for several National and International companies, we represent well known financiers and developers and hold a reputation for reliability that we intend to keep. Bennett Carroll prides itself on being prompt, accessible, and dealing with you in a language that you can understand; demystifying the law.

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We pride ourselves in being the market leaders in state-of-the-art technology combined with old-fashioned client service.

The solicitors in our family law section are Warren Tegg, Kate Murphy and Joanne Bennett



Warren Tegg

Warren was admitted to practice as a Solicitor of the Supreme Court of Queensland and the High Court of Australia in 1979. He ran his own legal practice specialising in Family Law and Business Advice from 1980 until 2001 before merging with Bennett Carroll. Warren has been helping people with their Family Law problems since the inception of the Family Law Act in 1976.

Warren is Department Head with the Family Law division of Bennett Carroll. He brings to the department a wealth of experience that includes some five years running his own call centre for people with Family Law problems, as well as acting as a sessional mediator with Relationships Australia Queensland from 1989 to 1994. He is also the General Manager of the Master Guidance Company, which is a counselling service owned by Bennett Carroll.

Warren has served on a number of Queensland Law Society committees during his career and is currently a member the Small Practice Management division where he has been called upon to speak at State conferences on legal practice.



Kate Murphy

Originally from Northern NSW, Kate studied at Queensland University of Technology graduating in 2005 with a Bachelor of Laws and a Bachelor of Business. She has a strong interest in Family Law, which extends to international law relating to marriage and children.

Kate was admitted to the Supreme Court of Queensland in 2006 and the High Court of Australia in 2007. Kate has over 4 years extensive experience in Family Law, as well as engaging in Criminal and Commercial Law. Kate has also had the benefit of being trained with Pauline Tesler, with a strong focus on negotiation.

Kate is a member of the Queensland young lawyers association.

Joanne Bennett

Joanne graduated from Deakin University before completing her Professional Legal Training at Bond University in 2003 and was admitted in December that year.

Joanne is an experienced family lawyer and can offer professional assistance and guidance in all types of family law matters including those involving children and financial issues, de facto relationships, pre-nuptials and parental orders.

Joanne also has extensive Commercial Law experience in vital areas such as property, company structures, franchise agreements, joint venture agreements and leases.

Family law is a very complex and emotional area of law; it will involve your whole family. This is why when things go wrong, you need an experienced team of friendly lawyers who are compassionate professionals with real life experience who understand your problems.



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