

Our legal practice and your family and business on the mid north coast – Woolgoolga, Coffs Harbour, Urunga, Bellingen, Nambucca Heads and Macksville -

Team Legal Mobile

- we come to you – or you come to us at Park Beach Homebase 252 Pacific Highway Coffs Harbour or at 24 Thornbill Glen Nambucca Heads.

There is no extra charge for our mobile legal service and the first interview is free!

De facto and personal relationships

Will the law recognise my de facto, or close personal relationship?

The law recognises your relationship if you and your partner:

- Live together in a de facto relationship (either opposite sex or same-sex relationship) as partners on a domestic basis for a qualifying period; or
- Have a close personal relationship which is between two adult persons, whether or not related by family, where one or the other provides domestic support and personal care, which must not be for fee or reward.

In some areas of law in NSW your rights as a de facto spouse will be the same as if you were a partner in a regular marriage relationship.

For example, you may have rights under the Wills, Probate and Administration act to a share of the intestate estate of your deceased partner, or to make a claim under the Family Provision Act or to receive compensation under workers compensation law if your spouse dies in the course of employment. You may also have rights under the Commonwealth Social Security Act.

If in doubt about your right you should consult *Team Legal*.

Am I entitled to a property settlement?

The NSW Property (Relationships) Act (formerly the De Facto Relationship Act) gives important rights to de facto partners and people in close personal relationships. The law gives such partners rights which are in some limited ways similar to those of a married partner claiming property settlement, regardless of whose name the property is in. However, you usually need to show that you have lived together for at least two year. If you relationship has lasted less than two years, you may claim if:

- There is a child of the relationship, or
- You are caring for a child of the other party, and the failure to make an order would result in serious injustice to you, or
- You made substantial contributions (financial or personal) for which you will not receive adequate compensation if the court does not make a property order, and the failure to make an order would result in serious injustice to you.

In deciding on the division of property, the court will take into account the financial and non-financial contributions of each partner – for example the labour involved in renovating property or answering the phones for a business – and the contributions of each partner as a homemaker and parent.

The property from which you can claim may include real estate and personal property such as funds held in a company, or damages payable to your partner as a result of court proceedings, but generally not superannuation owned by the other party. However, superannuation and property owned by a discretionary trust will often be a financial resource and relevant to a property settlement.

Applications for property division must be made to the Supreme Court, District Court or the Local Court within two years of the end of a relationship.

The maximum you can claim in the Local Court is **\$60,000**, unless the parties agree to the Local Court hearing a claim for a higher amount.

The maximum you can claim in the District Court is **\$250,000**.

In some circumstances you may be able to apply outside the two-year period if the court gives permission. It is best for the claim to be made within two years of the end of the relationship.

Can I claim maintenance?

Under the Property (Relationships) Act you have limited rights to claim spouse maintenance.

You must show either that you cannot work because of the care of a child under 12 of the relationship or of the other party, or the care of a physically or mentally handicapped child under 16, or that you have lost your earning capacity as a result of the relationship and that you are prepared to undergo training or further education to improve your earning capacity.

The court will consider your partner's ability to pay when determining how much maintenance you will receive.

Your entitlement ends if you marry or enter into another de fact relationship.

Child Support

A carer of a child is entitled to child support under the Child Support (Assessment) Act from the other parent of the child, irrespective of marriage.

Scientific tests can accurately establish whether a man is the father of a child and these tests can be ordered by the court depending on the circumstances.

Who will the children live with?

The Family Law Act deals with children's matter irrespective of whether or not the parents were ever married. The best interests of the child will be the most important consideration for the court.

As far as practicable, parents are encouraged to share parental responsibilities and to define their own individual arrangements. If they cannot do so, either party can apply to the court for order about where the child will live, about contact between the child and the parent, and about other matters such as schooling and religion.

Domestic relationship termination agreements

The law recognises that many couples choose to enter into financial agreements before they marry or before or after they enter into a de facto or personal relationship. These agreements are enforceable under the Property (Relationships) Act.

Before or during the relationship you may enter into a contract which decides how financial and other affairs, including maintenance and property rights, will be arranged. If you decided to make one of these agreements, you should consult *Team Legal* because to be enforceable, the agreements must comply with very precise rules requiring independent legal advice for both parties.

Can I claim social security benefits for my de facto relationship?

De facto partners have the same rights to social security benefits as legally married partners. If you have separated from your partner and have dependent children, you may qualify for a Commonwealth benefit. You may be eligible for other benefits in the event of your partner's death.

What rights do I have in circumstances of domestic violence?

The law will protect you if you are subject to violence or harassment even if your partner owns the house you live in. The court may grant a restraining order preventing the violent partner from entering your home or workplace. The court will also protect a child of a de facto relationship in the same way. In the event of an emergency you should contact the police or the Local Court.

How can *Team Legal* help?

Team Legal can:

- Outline your particular legal rights;
- Recommend mediation or counselling in appropriate cases;
- Help you make a financial agreement;
- Help you negotiate parenting arrangements or if necessary obtain parenting order from the court;
- Help you by preparing and arguing your case if there is a dispute to be heard by the Court.