



Delivering Solutions Since 1974



Q&S FAMILY UPDATE

MAY 2009

DE FACTO / SAME SEX PROPERTY DISPUTES

Long anticipated and substantial amendments to the *Family Law Act* commenced operation on 1 March 2009. The change means that the *Family Law Act* now covers agreements and disputes in relation to property between couples who have not married, including same sex partners. As a consequence, couples in a de facto relationship, who believe that they have worked out their own informal arrangements, will now be subject to the Family Law jurisdiction. If they cannot agree, and there is no formal arrangement (Recognised Cohabitation agreement or similar), the manner in which property will be distributed will be determined by the Family Court (for complex matters) or the Federal Magistrates Court.

Offices at:

Brisbane
Level 28 Central Plaza One
345 Queen Street
Brisbane

Beenleigh
99 George Street
Beenleigh

Caboolture
9 Elliott Street
Corner Morayfield Road
Caboolture

Cleveland
141 Shore Street West
Cleveland

Gold Coast
64 Marine Parade
Southport

Ipswich
55 Limestone Street
Ipswich

Telephone
Freecall 1800 652 969

mail@quinnscattini.com.au
www.quinnscattini.com.au

Importantly, however, it is the date of separation which determines the jurisdiction. If de facto couples separated prior to 1 March 2009, and they are disputing the method in which their joint property should be distributed, they will still find themselves subject to the Queensland Property Act unless, after receiving independent legal advice, they jointly opt into the new legislative regime. The other important date relating to separation is the limitation period for making a claim, that is two (2) years from the date of separation whether or not you separated before or after 1 March 2009.

If you are living in a relationship as a couple on a genuine domestic basis then you can be defined as living in a de facto relationship. Such a relationship can exist between two (2) persons of different sexes and between two (2) persons of the same sex and can exist even if one (1) persons is legally married to someone else or in another de facto relationship. The later could occur where a husband and wife have separated but not divorced. Either or both parties could then form a relationship with another person which ultimately may be defined as a de facto relationship. Clearly, matters can become complicated.

What difference does it make to your rights? The key distinction is that the parties' financial and non financial contributions and relative future needs are now taken into account in de facto scenarios in the same manner as they have been taken into taken in relation to matrimonial property division.

Property Claims only arise in a de facto relationship if the parties have been together for two (2) years, or have a child. However, claims may be made if there has been a substantial contribution and injustice would occur if the claim was not permitted. Factors taken into account in marriages are now applied to de facto relationships. That is, past contributions, both financial and non financial, as well as future needs are accounted for when determining the appropriate division of property for the parties to a de facto relationship. Another practical benefit is that the ability to split superannuation is now available to de facto couples, as they are with married couples. Whilst on the topic of relationships and children, it should also be noted that from 1 July 2009 the Child Support Agency will have the authority to process applications for child support for children of same sex couples.





Delivering Solutions Since 1974



Q&S FAMILY UPDATE

MAY 2009

DE FACTO / SAME SEX PROPERTY DISPUTES

The changes to the law regarding de facto couples are substantial. The ultimate effect is that it no longer matters whether couples are married or not. If there is separation (post 1 March 2009) then, if there is no enforceable agreement as to separation of property, the matter will be ultimately determined by Courts exercising the jurisdiction of the *Family Law Act* applying the same factors as would be applied to separating married couples.

Tim Ryan, Partner
Family Law Specialist,
Quinn & Scattini Lawyers

If you would like to ask any question about this or any other similar issue Tim may be contacted on 3821 2766 between 8.30am to 5pm Monday to Friday.

*In addition to residential and commercial Conveyancing services,
our team of experienced lawyers practice in Business Law, Commercial Litigation,
Property Law, Wills & Estates, Criminal Law and Family Law.*

Offices at:

Brisbane

Level 28 Central Plaza One
345 Queen Street
Brisbane

Beenleigh

99 George Street
Beenleigh

Caboolture

9 Elliott Street
Corner Morayfield Road
Caboolture

Cleveland

141 Shore Street West
Cleveland

Gold Coast

64 Marine Parade
Southport

Ipswich

55 Limestone Street
Ipswich

Telephone

Freecall 1800 652 969

mail@quinnscattini.com.au

www.quinnscattini.com.au

