

## Do you have a de facto relationship?

Few people worry about living in a de facto relationship nowadays. You will find that the only concern they show is whether they are likely to lose half of their property if the relationship ends and whether their children are going to miss out on inheriting their property when they die.

The Property (Relationships) Act says that you cannot be in a de facto relationship if you are under 18. While there are some couples who live together before they are 18, they usually have so little property that this aspect of the law causes no problems.

The Act says that you are in a de facto relationship if you are living together as a couple (and are over 18, of course). In deciding whether you are living as a couple the Court is required to look at “the circumstances of the relationship.” It can consider any of the following factors if it thinks they are relevant:

- How long you have lived together
- Whether you live in the same house all or part of the time
- Whether you have a sexual relationship
- Whether you mingle your finances
- Whether one of you supports the other financially
- Who owns your property, how you use it and how you got it
- Whether you are both committed to a shared life
- Whether you have children and who looks after them
- Who does the housework
- Whether other people see you as being in a relationship

The question of whether you could have a de facto relationship if you own separate houses and just live together in the weekend has not been tested by the Courts yet. If there is some degree of mingling of your finances you could well be in a de facto relationship. If you have a child in common as well it is even more likely. Probably other people would need to see you as being in a relationship.

The Courts have referred to a shared home as “the cornerstone of the marital relationship”. Similarly, they would see owning (or renting) a house together as one of the more important aspects of a de facto relationship. Even a couple who work in different towns all week would be seen as being in a de facto relationship if they spent their weekends in a house they both own.

If you spend the weekends in a home owned by only one partner the Court would probably look at why you live apart during the week. If you need to work in different towns, you would probably be seen as having a de facto relationship.

People sometimes ask whether you could have a de facto relationship with no sex. This is possible, as there are some marriages in which the husband and wife have no sexual relationship. There is the possibility of an elderly couple deciding to have a relationship which includes most of the characteristics of a de facto relationship (mingling their finances, buying a house together and going out in public together) but does not include sex.

There probably does not need to be a mingling of your finances for a de facto relationship to exist. Some couples do not have access to each other's bank accounts. The family home may be owned by only one of them. The lack of financial sharing will be unimportant if most of the other aspects of a de facto relationship are present.

If one of you is not committed to having a shared life, such as taking the other person out socially and spending time with the children, you could still have a de facto relationship. It would depend on whether most of the other criteria of a de facto relationship are present, such as whether you have children and own a house together and whether one of you supports the other financially.

You could still have a de facto relationship if the children in your household are the children of one partner only. It would support a claim that there was a de facto relationship if one person was caring for the other partner's children for no payment. The other criteria would need to be considered as well.

People sometimes ask whether you could have a de facto relationship but not be seen as being a couple. There are still some "closet" same sex partners whose families do not know that they are living in a sexual relationship. If the couple live in the same house and have a sexual relationship they probably have a de facto relationship.

The law specifically mentions the possibility of having a de facto relationship and a marriage at the same time. But your lawyer will not recommend it. If one partner dies and both the spouse and the de facto partner want to have a share of the dead partner's property it could create a tense situation and financial problems.

That leads to the question of whether you could have two de facto relationships at once. Our lawmakers have thought of that too and it is mentioned as a possibility.

There can sometimes be disagreement about when a de facto relationship started. Relationships can develop gradually, with people starting to stay overnight at each others' homes and later living together full time.

Sometimes there is even difficulty in deciding when a de facto relationship ends. There are cases of husbands and wives "living apart" in the same house and this can occur in de facto relationships that are breaking down. The Court would want to know why you were living under the same roof, whether you were having meals together and whether you were carrying out household tasks for each other.

With all these matters to be considered, there is even the possibility of your thinking you are in a de facto relationship while your partner thinks you are not. Time will tell how much difficulty the Courts will have in deciding when de facto relationships exist.

If you have any concerns in this area or would like to know more, contact your solicitor.

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