

Substantial legal changes to the financial entitlements and liabilities of de facto and same sex couples.

The laws governing de facto relationships, including those of same sex couples, changed on 1 March 2009 to allow couples to divide their property in accordance with the same laws that apply to married couples under the Family Law Act 1975.

The new law makes provision for the division of property between de facto partners after separation and, in certain circumstances, the payment of spousal maintenance.

If you are in a de facto relationship and that relationship has broken down on or after 1 March 2009, you will be eligible to apply to the Family Law Courts in relation to your property settlement and spousal maintenance matters similar to those of married couples.

Relationship agreements entered into prior to the commencement of a relationship will be similar to pre-nuptial agreements for parties contemplating marriage which are now enforceable under the Family Law Act.

If your de facto relationship broke down before 1 March 2009, New South Wales state laws will still apply to your relationship. However, you may wish to “opt in” for the new laws to apply to the division of your property, if so a written consent by all parties involved will be required. In this instance, you will both need to obtain a certificate of independent legal advice.

To come under the Family Law Act, you must satisfy **one** of the following:

- You must have been in a de facto relationship for at least 2 years; or
- there is a child of the de facto relationship; or
- there has been a substantial financial or non-financial contribution to the property by either of you or as homemaker or parent and a serious injustice would result if an order was not made in the circumstance; or
- the de facto relationship has been registered in a State or Territory.

If you have already obtained final court orders in respect of your property or spousal maintenance, or you are party to existing binding financial agreement, you cannot seek a new property settlement incorporating the new changes.

On the other hand, if you do not wish to settle your matter under the new laws, you are still able to enter into your own binding financial agreements. A binding financial agreement effectively excludes the courts jurisdiction and enables you to enter into your own private agreement.

It is important to note that property must be settled within 2 years of the end of your relationship.