

Property (Relationships) Act 1984 Domestic Relationship Agreement

30 August 2005

What is a Domestic Relationship Agreement?

The Property (Relationships) Act 1984 applies to de facto relationships. Under that Act parties to a de facto relationship may make an application to the Court for adjustment of property interests in the event that their relationship breaks down.

People who live in de facto relationships do not currently have the same legal rights as married couples. Under the Property (Relationships) Act 1984 the application must be made through the Local Civil Courts, either the District Court, the Local Court or the Supreme Court.

Rather than face the uncertainty of a Court verdict and the consequent legal costs you and your partner can get around this problem by making a legally binding agreement in order to create some certainty for both your financial futures. In New South Wales parties are able to make a domestic relationship agreement.

How do I enter into a Domestic Relationship Agreement?

The agreement needs to be certified by a separate and independent solicitor acting on behalf of each party.

In this regard, McDonald Johnson Lawyers could prepare the binding agreement and advise one party and certify the agreement for the purposes of one party but another solicitor would need to certify the agreement for the purposes of the other party.

These agreements can be made either before you commence living together or whilst you are living together.

The agreements can cover your legal rights in relation to property and maintenance if you separate.

When is a Domestic Relationship Agreement recommended?

A Domestic Relationship Agreement is recommended if any of the following circumstances apply to you:

- (a) You have property from a previous relationship.
- (b) There is significant difference between your partner's wealth and yours.
- (c) You have received, or are expecting, an inheritance.
- (d) You have, or are expecting to receive, a compensation payment or other lump sum.
- (e) You have a business or a family farm.
- (f) You or your partner have children from a previous relationship.
- (g) You or your partner have significant debts.

This is not an exhaustive list.

Can a Court overturn a Domestic Relationship Agreement?

You should be aware that Domestic Relationship Agreements can be set aside by the Court but they will usually only be set aside in limited circumstances.

The main reason why a Domestic Relationship Agreement might later be overturned by a Court is if the circumstances since the agreement was made have significantly changed to such a degree that there would be a serious injustice if the agreement was enforced.

The most obvious significant circumstance is if the parties actually have children.

There are other reasons the Court will overturn a Domestic Relationship Agreement such as if one of the parties has not disclosed some important information, fraud or misrepresentation.

Can the Domestic Relationship Agreement be varied?

Obviously, if your circumstances do change and you and your partner agree, you can vary the agreement in writing at any time. You can also agree to revoke the agreement and, if you wish, enter into a new agreement.

Does a Domestic Relationship Agreement deal with children's issues?

Domestic Relationship Agreements under the Property (Relationships) Act 1984 cannot govern parental responsibility, residence, contact and child support. These issues are governed by the Federal law and the Family Court of Australia still has jurisdiction to deal with these disputes even where the parties are in a de facto relationship and are not married.

How do I Obtain Further Information?

Sonia Anderson at McDonald Johnson has experience in preparing Domestic Relationship Agreements and can assist you with any further information you may require.

