

PROTECTION OF PROPERTY RIGHTS FOR DE FACTO PARTNERS

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What is a Domestic Relationship Agreement?

Under the *Property (Relationships) Act 1984* parties to a de facto relationship may make a legally binding agreement, known as a Domestic Relationship Agreement, to cover their legal rights in relation to the division of property and payment of maintenance in the event that the parties separate. An Agreement cannot, however, cover parental responsibility of any children of the relationship, child support or with whom a child is to live or spend time.

The Agreement can be made either before the parties commence living together or whilst they are living together. An Agreement creates some certainty for the parties' financial futures as it alleviates the uncertainty that surrounds an application to the Court for adjustment of property interests once the relationship has broken down.

When is a Domestic Relationship Agreement recommended?

An Agreement is recommended if any of the following circumstances apply:

- (a) Either party has property from a previous relationship;
- (b) Either party has significantly more wealth;
- (c) Either party has, or is expecting, an inheritance;
- (d) Either party has received, or is expecting to receive, a compensation payment or lump sum;
- (e) Either party has a business or family farm;
- (f) Either party has children from a previous relationship; or
- (g) Either party has significant debts.

This is not an exhaustive list.

Can the Domestic Relationship Agreement be varied or overturned?

If the parties circumstances change and both parties agree the Agreement can be varied in writing at any time. The parties can also agree to revoke the Agreement and, if they wish, enter into a new Agreement.

It is important to note that the Court can set an Agreement aside but an Agreement will usually only be set aside in limited situations. One example is if the circumstances since the Agreement was entered into have changed to such a degree that there would be a serious injustice if the Agreement was enforced. For example, if there were children of the relationship at the time of enforcement but no children at the time the Agreement commenced.

How to obtain further information

An 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.

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

