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NEWS 19

Fair deal for de factos

Mark Oberhardt
LEGAL AFFAIRS REPORTER

CHANGES to the Family Law Act have left thousands of Queensland couples asking whether they are dating or in a de facto relationship.

For many years property disputes involving de facto relationship break-ups were handled by state courts.

But after March 1 this year, any dispute between de factos will be handled by the Family Court, except in South Australia.

The ratio of unmarried to married couples in Queensland is about 50-50, with at least 100,000 Queenslanders in de facto relationships in the eyes of the law.

Family law experts believe many people are in legal de facto relationship but don't know it.

The new laws have a consistent definition of a de facto relationship as a couple, regardless of sexual orientation, living together on a genuine domestic basis.

But there are several criteria a court will look at in establishing a de facto relationship.

For example, the length of time people have lived together, people working away (even in other states) and returning "home" for rest or vacation periods, people having separate residences but often staying together overnight, and whether there are children.

Brisbane North Family Law Services partner Clarissa Rayward said a simple solution to questions about a relationship was to ask a lawyer.

For instance, suggestions a



LEGAL advice recommended... Brisbane North Family Law Services partner Clarissa Rayward.

Picture: Mark Calleja

mistress could claim to be in a de facto relationship with her lover would need a lot of qualification.

"Perhaps, if he had bought her a house and a car, but it would need close scrutiny," she said. "But we have received numerous inquiries from people who are uncertain as to how their relationship would be classified given the significant amendments to the Family Law Act 1975.

"Of particular concern to our clients who are commencing

new relationships is, firstly, are they in a de facto relationship and, secondly, if they are, how do they protect their wealth accumulated prior to the relationship starting?"

Ms Rayward said that in many ways Queensland laws already reflected the new federal laws.

"But in NSW there are some big differences and that can create problems for people who were in a de facto relationship in Sydney and have moved here," she said.

While many young people

enter into de facto relationships, it is becoming just as prevalent among older couples.

"We regularly see, as an example, a man aged 65 with adult children, entering a relationship with a woman aged 65 with adult children.

"Neither needs the other's money and (they) want their individual inheritance to go to their kids," she said.

Ms Rayward said it was advisable to come to an agreement before any problems arose.

"Commonly, they are wish-

ing to secure their assets for their children from a previous relationship," she said.

"In such circumstances, we advise our clients to enter into Binding Financial Agreements (a formal written agreement) as a means of ensuring legal certainty as to the treatment of certain property and financial resources in the event the relationship breaks down."

Ms Rayward said people who were contemplating forming a de facto relationship, or who were currently in a de facto

Test factors

SOME factors which can determine whether a de facto relationship exists:

- Whether the parties have a sexual relationship.
- The nature and extent of the parties' common residence.
- The duration of the relationship.
- The degree of financial dependence or interdependence and any arrangements for financial support between the parties.
- The ownership, use and acquisition of their property.
- The degree of mutual commitment to a shared life.
- The care and support of children.
- The reputation and public aspects of the relationship.

relationship, could enter into a formal written agreement (similar to a pre-nuptial agreement) to provide some certainty on any property division.

One way to solve problems about defining a de facto relationship would be to have a register, already used in some states, where people in effect admit they are in a de facto relationship from a certain date.

BNFLS will host a free de facto relationship information session on Tuesday. Information: www.bnfls.com.au