

SHOW ME THE MONEY ... NOT IF YOU'RE JUST "FRIENDS WITH BENEFITS!"

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Often in a relationship two people don't know exactly where they stand and there may be a few questions you can ask yourself; that is:

- Is my partner "*enjoying*" themselves elsewhere?
- Does it matter if my partner calls me "*mate*"?
- Does it matter that my partner doesn't take me on holidays with them?

All of these questions appear now to be important if you're looking to make a claim for your partner's property, post-separation.

If your partner is enjoying themselves with others, calls you "*mate*" and won't take you on their holidays, then chances are you are in "*friends with benefit*" situation and not a de facto relationship. The kicker with not being in a de facto relationship is that you have no access to the pot of gold at the end of the rainbow.

So, when does the "*friends with benefits*" relationship become a legal de facto relationship?

A recent case in the Federal Circuit Court has tried to answer that question. A same-sex couple had been friends for 8 years, had sexual relations on and off throughout that period and lived together for a period of 6 years.

The applicant (the younger man), who believed the two parties were in a de facto relationship, described the relationship as mutually supportive as he understood to the exclusion of all others. The respondent however, described the applicant as his "*mate*" and on occasions a "*sex buddy*", while exploring multiple other sexual relationships.

If the court found that the parties were in a de facto relationship the applicant was seeking 40% of the asset pool, which was made up largely of the contributions of the respondent, as the applicant had been on Centrelink payment for a number of years.

After considering the facts of the case the Judge ruled that, in fact, the couple were not living together on a genuine domestic basis. The Judge noted the fact is that every relationship is different, and what constitutes that relationship may, in different circumstances, be very different from other relationships.

So what does the court consider when deciding if a couple is living in a genuine domestic relationship or if they are just having '*a romp in the hay*' on occasions:

- the duration of the relationship
- the nature and extent of their common residence
- whether a sexual relationship exists
- financial dependence or interdependence

- ownership, use and acquisition of their property
- the degrees of mutual commitment to a shared life
- whether the relationship is registered
- reputation and public aspect of the relationship.

The court has made it clear that no particular finding in relation to any circumstances is to be regarded as necessary in deciding whether a couple is in a de facto relationship. What isn't (or shouldn't) be a consideration for the court is whether the de facto relationship is same sex or not.

For advice on de facto relationships, please [contact](#) one of our highly experienced family law lawyers.

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