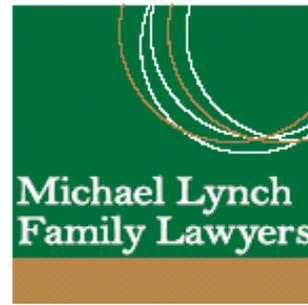


family flyer



Introduction

The Family Flyer is a free community service by Michael Lynch Family Lawyers. The publication is designed to be informative and topical and to assist you in understanding the ever-changing field of Family Law.

This edition includes:

- Solicitor Appointment
- Christmas Arrangements
- Bankruptcy Law Changes
- Registered Marriages continue to rise
- Caveats in Property Settlement Disputes
- "Simple" Disputes
- What age is the right age to listen to a child's wishes?

SOLICITOR APPOINTMENT

We are pleased to announce the recent appointment of Elizabeth Millar as a Solicitor at our office.

Elizabeth specialises in all aspects of Family Law.

CHRISTMAS ARRANGEMENTS

Separated parents need to finalise arrangements as to where their children will be spending Christmas as soon as possible.

The Family Court has set a deadline of November 11 for the filing of Applications to settle contact and residence issues for children over the Christmas school holiday period.

BANKRUPTCY LAW CHANGES

From mid-September, the Family Court is now able to determine Family Law cases and Bankruptcy cases, together.

Some of the changes include:

- The Court has the power to make property settlement Orders regarding property of a bankrupt, if a Trustee has been appointed; and
- Trustees in Bankruptcy can be joined to financial proceedings.

REGISTERED MARRIAGES CONTINUE TO RISE

The number of marriages in Australia is increasing.

Recent data (ABS) shows that, in 2001 there were 103,000 marriages, in 2003 there were 106,400 and in 2004 there were 111,000.

The average marriage age has also gone up, in 1984 for men it was 27 years and for women it was 24 years, in 2004 for men it was 32 years and for women it was 29 years.

Of the couples marrying in 2004, 76% had lived together prior to their marriage, this compares to 69% of couples in 1999.

CAVEATS IN PROPERTY SETTLEMENT DISPUTES

A caveat is a document that can be lodged with the Titles Office and prevents any dealing in the ownership of that real estate until the caveat is lifted.

In many family and defacto relationship property settlement disputes caveats are often considered as a way of preserving property, where one member is the sole registered proprietor of the real estate.

To be able to lodge a Caveat someone must have a "caveatable interest". A claim for property settlement in a marriage or defacto relationship is not a caveatable interest.

Lodging a caveat inappropriately can have serious cost consequences.

Anyone who is thinking of lodging a caveat should get Specialist Family Law advice. For further assistance telephone us on (07) 3221 4300 or visit us at www.michaelynchfamilylawyers.com.au.

"SIMPLE" DISPUTES

The Family Law Rules provide that the Family Court is able to provide a simplified process for the determination of matters that are considered "small claims".





**Michael Lynch
Family Lawyers**

In property cases there is no Conciliation Conference or Discovery, nor any Affidavits of Evidence in Chief at the Final Hearing.

In children's cases there is no Family Report done. These matters proceed on the basis that, at the Hearing of the matter:

- The parties must not call witnesses other than themselves;
- Evidence must be given orally; and
- Each party must produce all relevant documents.

The type of cases that may be classified as small claims, may include:

- In property cases, a dispute about a car or furniture, where there is minimal property or only personal property.
- In children's cases, a dispute about a time or place of contact changeover.

WHAT AGE IS THE RIGHT AGE TO LISTEN TO A CHILD'S WISHES?

The Federal Magistrates Court recently determined residence for an 8 year old girl in accordance with her wishes.

The facts were:

- The child had lived with the Mother until she was 7 years and then with the Father for 1 year.
- The Mother had a daughter aged 12 years from a previous relationship.
- 18 months before the Hearing the Mother was in a serious motor vehicle accident and sustained various injuries. Following that incident the child experienced difficulties with school.

- The Father offered to assist the Mother with the child's care. The Mother agreed to this.
- At Hearing, the Mother stated that the child's wishes were to return to living with her and the Father stated that the child's wishes were inaccurate and unreliable and that he should have residence as he was in a better position to promote the child's education.
- A Family Report was prepared that reflected the child's wishes, to live with the Mother.

The Court found:

- There were a number of issues to consider in determining the child's residence, the most significant was the child's wishes.
- The wishes of children are important and realistic weight should be given to them. The weight to be given will vary.
- It is risky to believe what a child says when that child clearly wants to achieve an outcome.

The Court held that:

- The child was not a mature child and she could not possibly understand the future ramifications of her wish and that her wishes should be seen as a reflection of the relationship she had with each of her parents.
- The child exaggerated and made statements about her Father which were far from the truth.
- The child wanted the Court to know that she wanted to live with her Mother.

The Court Ordered that the child live with the Mother and that the Father have contact 2 out of 3 weekends.

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