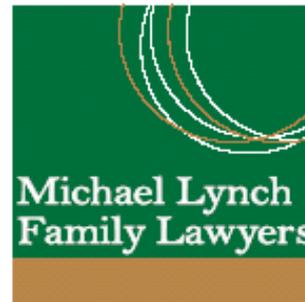


family flyer



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:

- New Solicitor
- Superannuation in Property Disputes
- Lottery Winnings in Property Settlement
- Contravention of Contact
- International Child Abduction
- Obtaining Child Support from Overseas
- Issues of Interim Residence
- Defacto Relationships - Property Settlement

NEW SOLICITOR

As some readers would already be aware, a new solicitor has recently joined our practice.

We are delighted to have Ms Kate Bint, Solicitor, as an addition to our specialist family law practice.

Kate has had many years experience as a solicitor in Brisbane, practising predominantly in Family Law.

Any readers with queries or requiring Family Law assistance, should now feel free to contact Michael, Ann or Kate.

SUPERANNUATION IN PROPERTY DISPUTES

Despite recent media attention, there has been no change in the law regarding the Family Court's consideration of Superannuation in matrimonial property disputes.

Recent comments by members of Parliament have been to the effect that Superannuation should be treated by the Court as "property" and should therefore be divided as if a "realisable" item. This is not the case. The *Family Law Act* treats Superannuation as a "financial resource". The law regarding Superannuation funds also prevents policies from being split and transferred between parties.

In treating Superannuation as a "financial resource" the Family Court will consider it in cases, on a case by case basis by applying its own developed method of calculation.

LOTTERY WINNINGS IN PROPERTY SETTLEMENT

The Family Court recently considered the respective contributions between two parties to a lottery winning.

The Trial Judge quoted from a previous Full Court (Family Court) decision where it was concluded that where a marriage is based upon the parties pooling their financial resources, a winning lottery ticket is taken to have been purchased from joint funds and the contribution of the prize is a joint contribution by both parties.

In the case before the Court the Judge decided that at the time of the lottery win the couple were not husband and wife (although they did later marry) and they were not cohabitating at the time, although they were involved in a sexual relationship.

The Court found that they did not pool their funds and that the ticket had been purchased with the wife's money and therefore it should be attributed to her as a contribution to the marriage in determining the likely Property Settlement.

CONTRAVENTION OF CONTACT

In recent time, the number of Applications in the Family Court for Contravention of Contact have significantly increased.

Many of the Applications filed have been brought by Applicants in person, that is, without legal representation.

The nature of Contravention Applications is that both parties are entitled to the ability to provide their evidence to the Court, orally. The result is that such hearings typically take a lengthy period of time and quite often exceed the "two hour limit" that the Family Court provides for such normal Court listings.

The Court is looking carefully at addressing this issue so as to avoid wasted time and costs for people pursuing such Applications through the Family Court.





INTERNATIONAL CHILD ABDUCTION

Where a parent has a Family Court Residence Order and the other parent takes the child overseas without the consent of the residence parent, the residence parent is entitled to seek return of the child under the "Hague Convention".

The "Hague Convention" is an international convention that has many countries as signatories to it. There are currently approximately 45 countries as signatories to this convention.

The effect of the "Hague Convention" is that the Commonwealth Attorney-General's Department, known as the "Central Authority", in the respective countries will act on the resident parent's behalf in making Application to the Court to compel the return of the child to the child's place of origin.

In such Applications, the resident parent is usually legally represented and that legal representative would liaise with the Central Authority in supporting the Central Authority in the Application.

OBTAINING CHILD SUPPORT FROM OVERSEAS

When a paying parent resides overseas, it is often still possible to collect Child Support through the Child Support Agency.

If the paying parent is residing overseas and is not paying tax in Australia, then the Child Support Agency is excluded from assessing or collecting Child Support payments, unless the country has a maintenance arrangement with Australia. Approximately 80 countries do have such an arrangement.

Some countries require that a Child Maintenance Order be obtained in an Australian Court and then registered in the local court of that country.

Should you have particular queries, feel free to contact his office or the Child Support Agency.

ISSUES OF INTERIM RESIDENCE

When a Court is required to decide the issue of Interim Residence for a child there are various factors which the Court must consider.

One significant factor which the Court must consider is that of the child's "status quo". The notion of "status quo" arose from a significant Family Court case approximately 18 years ago.

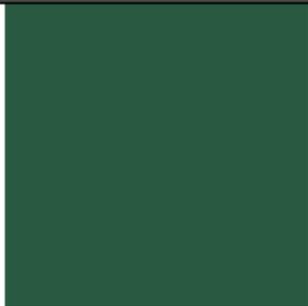
The notion of "status quo" involves a consideration of where the child has been living the majority of the child's time immediately prior to the Court Hearing.

A recent decision of the Full Court of the Family Court has slightly modified the notion of "status quo" by creating a lower threshold test by interpreting the question as one of "stability" of the child's arrangements, rather than simply the "amount" of time.

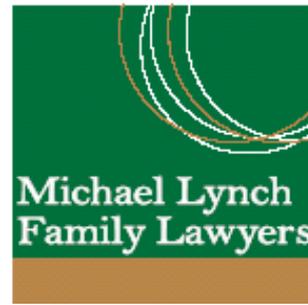
DEFACTO RELATIONSHIPS - PROPERTY SETTLEMENT

Despite recent media attention the law in Queensland in respect to Property Settlements in defacto relationships is still unchanged.

Since Queensland transferred its State powers regarding children from defacto relationships to the Commonwealth Government, approximately 15 years ago, child matters now come within the Family Court, however property disputes in defacto relationships still do not come within the scope of the Family Court.



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Queensland has had draft legislation to try and address this since 1993, however it has not been enacted and there seems no immediate likelihood of that occurring.

Currently all states in Australia operate on different laws with respect to de facto Property Settlement disputes. In Queensland determination is made under the common law and these principles are significantly different to those which apply to Property Settlements in marriages, under the *Family Law Act*.

Consequently, getting proper legal advice regarding Property Settlement in a de facto relationship requires providing detailed background information and must be carefully considered on a case by case basis.