

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:

- Counselling - Confidentiality
- Relocation - Removal of Children Overseas Refused
- Queensland Defacto Relationship Legislation
- Asset Values
- Lottery Winnings in Property Settlement
- Specific Issues Order for Long Term Care - Can it be Contravened?
- Property - Short Marriage
- Overseas Adoption Orders
- Contact Rights for Non-Biological Parent

COUNSELLING - CONFIDENTIALITY

The Full Court of the Family Court recently considered a case regarding a private Counselling organisation. The Court had to determine whether the organisation received protection for client confidentiality under Section 19N of the *Family Law Act*.

The Father argued that disclosures by the Mother in Counselling should be able to be raised in Court due to the "paramountcy principle for child welfare".

The Full Court considered a previous case which involved as Northern Territory Government Department which had alleged State legislative protection for confidentiality. In that case, the Full Court found that the *Family Law Act*, being Commonwealth legislation, was superior to State legislation and therefore there was no protection from confidentiality.

The Full Court therefore decided, with respect to the Counselling organisation, that as a matter of fundamental construction Section 19N of the *Family Law Act* prevailed and the client dealings with the counselling organisation remained confidential.

RELOCATION - REMOVAL OF CHILDEN OVERSEAS REFUSED

Mother of four children has not been allowed to move to Scotland because the youngest child did not want to go and the Court found that there would be an "unacceptable risk" of emotional damage to the child if he no longer had contact with his Father.

The Full Court said that there is nothing which limits the concept of "unacceptable risk" to abuse cases and that it is a useful test in many other circumstances.

QUEENSLAND DEFACTO RELATIONSHIP LEGISLATION

Since the recent State election, Family Lawyers have waited with anticipation for the State Government's proposed action in the area of Defacto Relationship legislation, particularly for Property Settlement matters.

In late September 1998, the Attorney-General announced in the media that legislation would be put before the Parliament shortly dealing with Defacto relationships and that this would incorporate same sex couples.

Immediately following this announcement, the media reported that the Minister was reprimanded by his party for making the comment without cabinet consultation. It appears that there was also political concern at Parliament's attitude to the proposed legislation and the likelihood of it being passed.

It now seems unlikely that any immediate change will occur in Queensland with respect to Defacto Relationship legislation.

ASSET VALUES

If a party in a Property Settlement is to receive an investment property or shares, it is highly likely that a Capital Gains Tax liability will also be inherited with that asset. In some cases this can be substantial.

People should keep in mind potential Capital Gains Tax liabilities and asset realisation costs in cases where assets are to be sold.

If a party is to receive an asset that immediately after settlement they intend to sell, they should factor into the value of the asset a realisation cost.





LOTTERY WINNINGS IN PROPERTY SETTLEMENT

In a recent case before the Family Court, a married couple had lived together for almost two (2) years. At about the time of cohabitation, approximately \$480,000.00 was won on a lottery ticket purchased by the Husband, using the Wife's Lotto card. The parties then opened a joint bank account to deposit the winnings.

The Court followed Full Court precedent in deciding that where a marriage is based upon the pooling of resources, a winning lottery ticket is taken to have been purchased from joint funds and the contribution of the prize winning is treated as an equal contribution by both parties.

In this case, the Court found that there was no cohabitation until after the win and the couple had not pooled their funds. The Court therefore determined that the ticket had been purchased with the Wife's money and accordingly that was an element of contribution that favoured the Wife.

SPECIFIC ISSUES ORDER FOR LONG TERM CARE - CAN IT BE CONTRAVENED?

The Full Court of the Family Court has held that an Order conferring long term responsibility for a child on a person jointly with another person is capable of being the subject of Contravention proceedings, if a person in whose favour such an Order is made is hindered or prevented from carrying out his or her joint responsibility under that Order.

PROPERTY - SHORT MARRIAGE

An Application recently came before the Full Court which involved a marriage of 18 months which commenced with the Wife contributing assets valued at approximately

The Court considered that the Wife had made a major contribution as homemaker, however her contributions overall to the property were relatively insignificant.

The Court considered that whilst the short period of cohabitation was important the most significant factor was the discrepancy in the parties financial circumstances.

The Court did not consider it appropriate to adopt a set percentage but made an Order of \$90,000.00 in favour of the Wife, in addition to those items already in her name.

OVERSEAS ADOPTION ORDERS

Adoptions made under the laws of an overseas country where that country is noted with Australia as being a "Prescribed Overseas Jurisdiction" will in future be recognised for the purposes of Australian Law. These new regulations came into effect on the 14th July, 1998.

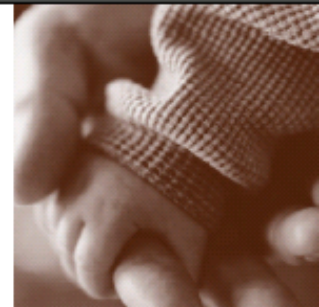
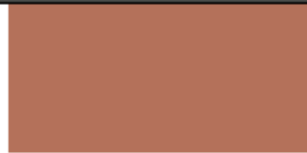
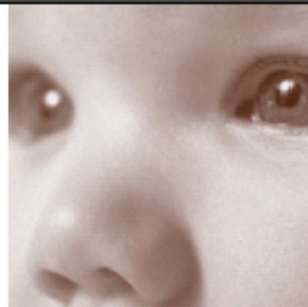
The Regulations provide that an Adoption Compliance Certificate issued by a competent authority in a Prescribed Overseas Country is evidence that the adoption was carried out in accordance with the laws of that country.

CONTACT RIGHTS FOR NON-BIOLOGICAL PARENT

A case recently came before the Full Court which involved a child that was born in 1992 and regarded as the biological child of Mr and Mrs C.

Following separation, parentage testing was conducted. The results of that testing excluded Mr C as being the Father and established that Mr D was the Father. Mrs C and Mr D then commenced cohabitation and planned to marry.

Mr C sought residence or alternatively, extensive contact to the child. Mrs C wanted Mr C to have nothing to do with the child. The Court ordered that Mr C continue to have contact with the child. The Full Court confirmed this decision and stated that the biological parent does not stand in any preferred position and that fact does not in any way impinge upon the principle that the child's best interests are paramount.



family flyer

Issue #10

Contact details

Michael Lynch Family Lawyers

Principal

Michael Lynch*

Senior Associates

Helen Bryden*

Associates

Emily Wood

Solicitors

Elizabeth Millar

*Queensland Law Society
Accredited Family Law Specialists

Telephone: 07 3221 4300
Facsimile: 07 3221 9454
Email: law@mlynch.com.au
Web: www.michaelylchfamilylawyers.com.au

Address: Level 6
193 North Quay
Brisbane Qld 4000

Post: PO Box 12027
George St, Brisbane Qld 4003



Approved
Law Society Mediator

Copyright © 2007

This document contains general comments only and should not be relied upon as specific legal advice. Readers should contact this Office for detailed information or advice on any topic in this document. Changes to the law occur regularly, no responsibility for any loss or damage caused to any person acting in reliance on this document shall be accepted by the Principal of this Office. No part of this document may be included on any document, circular or statement without our written approval.