



# family flyer

Issue #20

## 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:

- Welcome to Our Website
- Family Flyer - By E-Mail
- Beware: Relationships and Wills
- Whether a son should have his father's surname?
- No Divorces in the Family Court
- Child Support - Statistics
- No Value in Babysitting
- Property Settlement - Lottery Wins
- Child Support - Intensive Debt Collection
- Marriage Celebrants - Reform

## WELCOME TO OUR WEBSITE

Our website has recently been launched. We encourage all readers to access the site at [www.michaelyllynchfamilylawyers.com.au](http://www.michaelyllynchfamilylawyers.com.au) and make use of it.

The website is rich with resources and information including our recently published text "A Guide to Family Law - everyday answers" and previous editions of the Family Flyer.

We are extremely proud of what is available on the website and we trust it proves to be a great resource to all readers.

We encourage your feedback and comment regarding the site.

## FAMILY FLYER - BY E-MAIL

In April, we commenced the fortnightly e-mail issue of the Family Flyer. For those readers who are unable to receive the Family Flyer by e-mail we will issue a hardcopy edition of the Family Flyer every two (2) months.

If you are not already receiving the Family Flyer by e-mail and would like to, please provide your e-mail address to us at [law@mlynch.com.au](mailto:law@mlynch.com.au) stating "new subscription" in the heading or complete the new subscription details on our website.

## BEWARE: RELATIONSHIPS AND WILLS

It is important to be aware of the effect of relationships upon a Will, particularly whether the relationship is a marriage or a defacto relationship.

Marriage revokes a Will, unless the Will is made in contemplation of marriage, but the commencement of a defacto relationship has no such impact on a Will.

Divorce revokes any gift to a former marital spouse under a Will, but breakdown of a defacto relationship does not.

## WHETHER A SON SHOULD HAVE HIS FATHER'S SURNAME?

The Court recently considered a case regarding which surname a couple's son should have.

The daughter had her mother's surname, the son his father's. The mother argued that as the son lived with her and his sister that it was appropriate that he should have her surname rather than his father's.

The Court determined that the child should have both surnames with no need to hyphenate them. This was because the son had been using the father's surname and it would be in his best interests to retain it so as to continue the association with his father. However, it was held that he should add the surname of his mother so that his last name was the same as that of his mother and sister with whom he lived most of the time.

## NO DIVORCES IN THE FAMILY COURT

The Family Court no longer does Divorce Applications. The Court recently directed that all Divorce Applications should be filed in the Federal Magistrates Court.

The Direction formalises the growing trend of the Federal Magistrates Court in taking over Divorce Applications, previously handled by the Family Court. The filing fee is \$273.00.

## CHILD SUPPORT - STATISTICS

Statistics from the Child Support Agency, show that for the last year:



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- the Agency assisted over 1 million children and 1.3 million parents;
- over 50% of parents chose to have an annual assessment of Child Support and then to collect the Child Support privately; and
- the Agency cost \$240 million to administer. The Agency stating that this figure reflects the increase in the Agency's case load.

## NO VALUE IN BABYSITTING

The Family Court recently considered a case involving Children's matters and Property Settlement.

The Husband was a Computer Consultant. The Wife was a Dentist who at the time of the Hearing was a full-time homemaker. The parties were married for eight (8) years.

During the marriage the Wife's parents assisted the parties by frequently minding the children when the Wife was working outside the home. At the Hearing, the Wife argued that the childminding assistance was a "contribution" that should increase her Property Settlement entitlement.

The Court held that the childminding could not be included to increase the Wife's entitlement.

## PROPERTY SETTLEMENT - LOTTERY WINS

Even lottery wins come up in Property Settlements.

Determining how a lottery win is to be divided between parties in a Property Settlement depends largely upon when it came into existence.

The Family Court has consistently held that windfall gains during the course of a marriage are to be shared equally between the parties.

A recent example of one such case was where a Husband and friend during the course of the marriage won \$1 million in a lottery. The two men had been regularly purchasing lottery tickets together for several years. They took turns at purchasing the ticket and each ticket was purchased in both names.

In property proceedings before the Family Court the Husband argued that the winning ticket had been paid for with his own money and that therefore his \$500,000 share of the prize pool was his alone and should be considered a contribution by him alone to the matrimonial property.

The Court held that the \$500,000 was a windfall rather than the fruit of some labour or skill of the Husband and therefore it was not a contribution by the Husband to the parties' assets.

## CHILD SUPPORT - INTENSIVE DEBT COLLECTION

The Child Support Agency has introduced a new Intensive Debt Collection (IDC) initiative.

IDC teams were established following a special allocation of funds in the Government's last Budget.

IDC will concentrate on 66,000 debt cases over the next four (4) years with the aim of collecting unpaid Child Support worth approximately \$131 million.

## MARRIAGE CELEBRANTS - REFORM

The Marriage Celebrants Program was reformed in late 2003. The Government implemented the reforms in response to the growing demand for civil marriage ceremonies with a range of reforms to improve the Marriage Celebrant's Program.

In Australia today, over half of all marriage ceremonies are civil ceremonies. The new regulations set out initial and ongoing professional requirements for Celebrants as well as Register and Complaints procedures.

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