



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:

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- Website - Update
- Defacto Relationships - Property legislation
- Child Support & High Contact Costs
- The Interested Witness Rule - Who Should Witness a Will
- Property Settlement - How are Gifts Considered?
- New Family Law Rules

FORWARD THIS NEWSLETTER

Know anyone who might like to receive the Family Flyer? Forward the Flyer easily by clicking on the link at the end.

WEBSITE - UPDATE

As indicated in our last edition, we have recently launched our website at www.michaelynchfamilylawyers.com.au.

The number of visitors to the site has been overwhelming and our thanks to everyone who has relayed positive feedback to us about the extensive resources and information available on the site.

Our recently published book "A Guide to Family Law - everyday answers" and all previous issues of the Family Flyer are available on the website, as well as much more.

We are regularly updating the website. We encourage your continued feedback.

DEFACTO RELATIONSHIPS - PROPERTY LEGISLATION

On the 27th of October, 2003 the Queensland Parliament passed legislation that referred the power to legislate for Property division in defacto relationships, to the Commonwealth Government.

The referral of power dealt separately with the law in relation to heterosexual couples and the law in relation to same sex couples.

The referral of the power will only come into effect once proclaimed by the Queensland Government.

The State Government says this is so that it can first be satisfied with the changes in legislation that the Commonwealth makes to the Family Law

Act in order to take up the referral, before it takes the final step in giving the Commonwealth the power. The referral is not yet operative as the Commonwealth is yet to take up the referral.

The State Government referral paves the way for the Commonwealth Government to amend the Family Law Act

Significantly, this would mean that a member of a defacto couple (in the appropriate circumstances), could claim Spouse Maintenance and would be covered by the new Superannuation splitting provisions of the Family Law Act. Without the referral, these are not available options to defacto couples.

This will allow the Commonwealth to accept the referral for heterosexual couples, as it has indicated it will, but not for same sex couples, as it has indicated it will not accept. The effect of the legislation will be that Property Settlement disputes in defacto relationships can be dealt with in the same Courts and according to the same laws as applies to married couples.

CHILD SUPPORT & HIGH CONTACT COSTS

If a Contact Parent has costs for enabling Contact that amount to more than 5% of that parent's Child Support income, then that parent can apply to the Child Support Agency for a reduction in their assessment by way of a "Change of Assessment" Application.

The Contact costs must relate to enabling Contact (e.g. telephone, transport and accommodation) rather than to enjoy Contact (e.g. food or entertainment). The Agency will also consider legal costs necessary to enable Contact to occur, including costs for Contact and enforcement proceedings.

High Contact costs are just one of the special circumstances that enable a "Change of Assessment" Application to be made.



THE INTERESTED WITNESS RULE - WHO SHOULD WITNESS A WILL

The Queensland Succession Act states how Wills are to be completed.

The Act contains a provision called "the interested witness rule". This rule makes void any gift to a beneficiary, if the beneficiary or their spouse witnesses the Will.

It is the gift which is void - the Will remains valid. Other States have abolished this rule, however it continues in Queensland .

Professional expertise should be obtained in the preparation of a Will.

PROPERTY SETTLEMENT - HOW ARE GIFTS CONSIDERED?

The Court's position in relation to the treatment of gifts in a Property Settlement is that the party to whom the gift was made is given credit for a more substantial contribution on the basis of the gift.

A gift given to one of the parties, by his or her parents, at any time during a short marriage will result in that party being given substantial credit for that contribution.

If, on the other hand, the gift is received early in a long marriage where the spouse who has not been the recipient has worked hard and earned a substantial income or alternatively, has devoted him or herself to the homemaker role, then the impact of the gift will be diminished, if not totally eroded.

A significant Family Court case in this area related to a gift, from the Wife's parents.

The Wife's parents had gifted to the parties two blocks of land. The Husband contended that the blocks of land were given to him and the Wife

jointly and even though the donors of the gift were the Wife's parents, his view was that he and the Wife had "contributed" equally to this asset. The Wife argued that even though the property was transferred to the parties jointly, the Court should assess the gift as a contribution made on her behalf.

This is the Court's view, unless there is evidence that it was not the intention of the parent to benefit only his or her child.

The Court determined that "the gift of the land was to the parties jointly, however, it is clear that the motivating circumstance was the relationship between the Wife's parents and the Wife and it was transferred to benefit her because she was the daughter. The property should therefore be treated as a financial contribution made directly on behalf of the Wife".

NEW FAMILY LAW RULES

On the 29th March, 2004 the old Family Law Rules were entirely replaced. The new Family Law Rules run to 554 pages.

The new Rules have also introduced new Court forms that replace the previous forms. By way of example, an Application for Final Orders is now a Form 1 and a Response to an Application for Final Orders is now a Form 1A. An Interim Application is a Form 2 and a Response to an Interim Application is now a Form 2A.

The scope and effect of the new Rules is far too extensive for any meaningful summary in this article. We will highlight particular aspects in future editions.

The new Rules are extensive and introduce some dramatic changes to long established Family Court practices and procedures.

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