



# family flyer

Michael Lynch  
Family Lawyers

Issue #25

## 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:

- Get your Will done!
- Child Support - Change of Assessment
- Considering a Child's Wishes
- Wills - A Tax Saving Tip
- Property Settlement - Post-Separation Contributions
- Capital Gains Tax and Beneficiaries

## GET YOUR WILL DONE!

In specialising in separation and divorce matters we regularly receive requests to prepare Wills and Powers of Attorney and to assist with Estate Planning and Estate Administration.

To meet this demand we are pleased to announce the provision of comprehensive legal services in all of these areas.

Reviewing Wills is an important consideration when going through separation and divorce.

Ideally, Wills should be renewed whenever significant life events occur and at least every five (5) years.

Should you have queries about any of these matters or require assistance please call us to discuss.

## CHILD SUPPORT - CHANGE OF ASSESSMENT

When the Child Support formula was first introduced it was acknowledged that a formula may not adequately deal with cases involving children with special needs, additional costs of access or exceptional situations.

Accordingly, the Child Support legislation was amended to provide a process for considering such disputes.

The process requires Parents wanting to pursue a change of assessment to apply to the Agency first before making an Application to the Court for a Departure, unless they have other financial matters before the Court.

The result is that Parents who feel the Child Support formula is inappropriate in their circumstances have access to an administrative process (initially, a Departure Application and then an Objection process, before a Court Application can be made) that allows them to have their Assessment changed to better reflect their circumstances.

## CONSIDERING A CHILD'S WISHES

The Federal Magistrates Court recently considered a case where a child aged 10 years expressed a wish to live with the Father and where the Court Expert recommended that the present shared care arrangements should continue.

The facts were:

- The parties were married 13 years.
- At the time of the Hearing the Father worked part-time and the Mother worked part-time.
- The child lived with his Parents on a 4 day shared arrangement.
- The Father sought Final Orders that involved the child living with him for 9 days and then with the Mother for 5 days.
- A Court Expert interviewed the child a number of times. During these interviews the child expressed a wish to live with the Father.
- The Expert recommended that the child's wishes be discounted as unreliable because alienation from the Mother might occur.

The Court determined that:

- As the child was 10 years of age, his wish to spend more time with his Father must be given significant weight.
- The Court must have regard to the child's happiness and contentment when deciding on issues of Residence.
- The Court found that the Father was not a person who would permit the child to be alienated from the Mother.
- There was no sufficient basis for concluding that the child's wishes were unreliable or should not be respected or given effect to.



Approved  
Law Society Mediator



The Trial Judge determined that the child live with the Father 9 days per fortnight and the Mother 5 nights per fortnight.

### WILLS - A TAX SAVING TIP

When preparing a Will consider incorporating a Testamentary Trust into your Will. This could create Capital Gains Tax savings as well as ongoing income tax savings for your beneficiaries.

A Testamentary Trust comes into force on the death of the Will-maker and is a structure in which certain assets are held and from which distributions are made.

The Will-maker can decide which assets are held in the Trust, what distributions will be and who will receive them.

### PROPERTY SETTLEMENT - POST-SEPARATION CONTRIBUTIONS

The Full Court of the Family Court has ruled that post-separation payments which exceeded Child Support obligations can count as contributions in the determination of a Property Settlement.

The facts of the case were:

- The parties were married 15 years and had 3 children.
- For 4 1/2 years following separation the Husband paid the mortgage for the home where the Wife and children lived and significant other contributions. It was estimated that the Husband spent \$224,000.00 on the family in the 5 years post-separation.
- A Child Support Assessment was made during that period. At the time of the Hearing there were arrears of \$49,000.00.

- The Trial Judge off-set the Husband's contributions against his Child Support arrears, thereby reducing the Child Support obligation to nil. In assessing contributions the Judge refused to take account of the Husband's post-separation payments.
- The Trial Judge was of the view that the same payments could not be properly brought into account twice.

The Full Court held that:

- The Husband should be given appropriate credit for having provided significant amounts of support to the family during the post-separation period.
- The Trial Judge's concern that using the Husband's payments to off-set Child Support arrears and including them as contributions would be double-dipping, was incorrect.

### CAPITAL GAINS TAX AND BENEFICIARIES

Capital Gains Tax is an important matter to consider in Estate Planning.

The transfer of your assets to your beneficiaries does not realise Capital Gains Tax but when your beneficiaries sell the assets Capital Gains Tax becomes an issue.

Obtaining professional advice is important.

**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.michaelyllynchfamilylawyers.com.au

**Address:** Level 6  
193 North Quay  
Brisbane Qld 4000

**Post:** PO Box 12027  
George St, Brisbane Qld 4003

