



family flyer

Michael Lynch
Family Lawyers

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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:

- Quick and Concise Information
- You Need a Will
- Early Release of Superannuation - Compassionate Grounds
- Contact Contravention - Imprisonment
- What's in a Name?
- Superannuation - What You Need To Know
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QUICK AND CONCISE INFORMATION

Do you need to know anything about family and relationship law? Visit our website.

Since the launch of our website 6 months ago we have been overwhelmed by the number of visitors to the website and the positive feedback we have received from readers and clients.

The consistent response has been to thank us for the wealth of user-friendly information available, especially in our on-line book "A Guide to Family Law - everyday answers". Thank you for your continued feedback

Visit us at
www.michaelyllynchfamilylawyers.com.au

YOU NEED A WILL

Do you have a Will?

It is a tired question, but it continues to amaze us just how few people do have one. Even fewer people have Enduring Powers of Attorney.

Understandably, no-one wants to think about it, but the consequences of not having a Will and a Power of Attorney are serious, usually horrendous.

We regularly see the distress and upset caused by the lack of a Will, or the inadequacies of a Will.

The costs of a Will and a Power of Attorney are modest and are usually available at a fixed cost.

We encourage you to call Bernadette or Donna from our office to discuss getting your Will done.

EARLY RELEASE OF SUPERANNUATION - COMPASSIONATE GROUNDS

The Federal Court recently supported a decision of the superannuation governing body, (APRA) to reject a member's application for the early release of his preserved Superannuation benefits on compassionate grounds.

The circumstances were:

- The member owed \$10,243 as a Child Support Agency debt.
- He sought to extinguish his Child Support Agency debt with the early release of Superannuation.
- The member owned 3 properties, one co-owned with his brother as tenant-in-common which was his principal place of residence and 2 investment properties, subject to a mortgage.
- The Child Support Agency had a Judgment for the debt and Enforcement Warrants authorising seizure of the member's personal and real property (including his three properties), to satisfy the debt.

The member's compassionate grounds application was based upon a specific legislative provision that enables the early release of Superannuation for the purpose of meeting expenses, particularly to prevent exercise by a mortgagee of a power of sale over a house.

The Court supported APRA's decision to reject the application, saying it was not consistent with the ground of release and stated that it did not apply to prevent people losing their home in all circumstances (e.g. bankruptcy) but only where there were arrears on a loan by a mortgagee.



Approved
Law Society Mediator



CONTACT CONTRAVENTION - IMPRISONMENT

The Court recently dealt with a case involving a serious breach of a Child Contact Order by the Resident Mother.

The Mother resisted Contact between the Father and the child claiming that the child risked being sexually abused by the Father. That claim was rejected by the Trial Judge following a 7 day Hearing and Orders for Contact were made. The Mother did not comply with the Contact Orders.

The Father then pursued an Application for Enforcement of the Order. In response to that Application the Mother indicated to the Court that she would continue to refuse compliance with the Contact Orders. The Court then sentenced the Mother to 30 days imprisonment. 12 of those days were served prior to the Mother appealing to a higher Court seeking the suspension of the remainder of the prison sentence.

The Appeal Court suspended the remaining portion of the prison sentence imposed upon the Mother because she indicated that she would comply with the Orders.

WHAT'S IN A NAME?

The new Brisbane Magistrates Courts opened on 17th November, 2004.

With the new Court opening the Chief Magistrate also announced that from that day all of the Queensland Magistrates would be addressed in Court as "Your Honour" and no longer as "Your Worship".

SUPERANNUATION - WHAT YOU NEED TO KNOW

Superannuation is defined as "property" under the Family Law Act and therefore, in matrimonial Property Settlements it is able to be split by Court Order and transferred between the Husband and the Wife.

Property Settlements for defacto couples (in Queensland) are regulated by the Property Law Act (Qld). Under that legislation Superannuation is not "property" and cannot be split or transferred between the couple.

AT WHAT TIME DO YOU VALUE PROPERTY?

If a property division is being considered by the Court the date for valuation of the property is the date of the Hearing, not the date of separation.

The valuation of Superannuation is no different.

The Family Court recently showed that it is unsympathetic to requests by primary income earners to value Superannuation at the date of separation.

The case considered by the Court involved:

- the Husband's Superannuation was the only asset of any value;
- separation occurred in 1998 and the Trial was in 2003;
- for the intervening 5 years the Husband's Superannuation increased by approximately \$49,000.00, mostly due to his employer's contribution.

The Court rejected the Husband's argument that the Superannuation should be valued at the date of separation. The Court valued the Superannuation at the date of Trial.

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