



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:

- Free Seminar - Invitation
- Good News for Small Business
- Contact for Grandparents
- Wills - Burial or Cremation?
- Superannuation Worth Less Than its Valuation?
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FREE SEMINAR - INVITATION

We extend an open invitation to all readers to attend a free lunchtime Family Law Seminar to be held in Brisbane City on Friday, 4th March, 2005.

The Seminar, entitled "6 Things You Must Do When Separating" is designed for those people who are about to, or have just separated and are unsure what to do or what advice to get.

The lunchtime seminar will be held between 12.30pm and 1.30pm at Chifley at Lennons, Queen Street Mall. Anyone interested in attending should book by telephoning Amy on telephone 3221 4300 or visit the "Seminar Series" information at www.michaelylchfamilylawyers.com.au.

As well as a special guest speaker, we will also provide attendees with a free copy of our latest book "A Guide to Family Law - everyday answers".

GOOD NEWS FOR SMALL BUSINESS

Insight for Business is a new member based organisation for owners and managers of small to medium enterprise (SME's).

The organisation launched in Brisbane on the 1st of February, 2005 and is focussed on promoting practical skills for success in business and life balance.

The member services offered include magazine, newsletter, speakers...and much more.

We are associated with this exciting and worthwhile project and we recommend it to you.

For more information (and a complimentary copy of the first edition of the magazine) visit www.insightforbusiness.com.au.

CONTACT FOR GRANDPARENTS

The Family Law Act provides that Grandparents are entitled to pursue Court Orders for Contact with their grandchildren.

Many such cases have been considered by the Family Court. Two cases are briefly considered below, i.e.:

Case 1:

- The Family Court considered Contact between a Grandmother and her grandchild where the relationship between the child's Mother and the Grandmother was hostile.
- The Court found that the benefits that the child would get from direct contact with his Grandmother would not outweigh the trauma and difficulties which would be brought about by the Mother's negative comments towards the Grandmother.
- The Grandmother was not granted Contact.

Case 2:

- More recently the Court considered a case where the Paternal Grandparents sought Contact with their grandchild.
- The child's Parents opposed the Application on the grounds that the child might fret for her Mother and the child should not be caught in a dispute between her Parents and her Grandparents.

The Court stated that:

- It is very important for children's proper upbringing and development that they have Contact with a much wider family than merely the Parents of the relevant child.





- It is important for a child to understand that he or she is part of a wider family and that he or she has Grandparents on both sides, as well as Uncles, Aunts and cousins, so that the child grows up feeling part of an extended family.

WILLS - BURIAL OR CREMATION?

The Supreme Court of Queensland recently considered a dispute about whether a deceased person should be buried or cremated.

The deceased (Father) had 4 adult children. One of the children and her partner were executors of the estate. They believed that the Father had wished to be cremated. The other 3 children believed that the Father had wished to be buried.

The Father had not expressed his wishes in writing. The Court found that if the Father had left a direction for his remains to be buried or cremated and that direction had been properly signed by him, then that direction would have been followed. Where there was no written direction from the deceased, the executor had the right to decide how the remains should be disposed of.

The law states however that where a spouse, adult child, parent or executor of a deceased person objects to a cremation taking place and there is no written direction by the deceased, a cremation cannot lawfully be carried out.

The Court determined that this law overrides the right of the executor to decide how to dispose of a deceased person's remains. It was therefore ordered that cremation of the Father's remains could not lawfully be carried out because of the objections of the 3 children.

By Bernadette Drew, Solicitor

SUPERANNUATION WORTH LESS THAN ITS VALUATION?

The Family Court recently reduced a Wife's entitlement in a Property Settlement because most of the Husband's portion was tied up in Superannuation.

The Husband argued that the value attributed to the Superannuation did not take account of the fact that the money could not be accessed for many years.

The Judge found that:

- the valuation of an interest in the Superannuation fund pursuant to the regulations throws up a figure that is not in fact the real value of the fund, at least, in the case of accumulation funds in the growth phase.
- it was appropriate to make a 5% adjustment in the Wife's favour (due to the disparity in earnings) however, as neither party had sought a Superannuation split the Superannuation would make up almost 90% of the Husband's 45% share. The Court considered that this was not just and equitable and the division was changed to 45% to the Wife and 55% to the Husband meaning that the Husband would still have over 70% of his property in the form of Superannuation.

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