



family flyer



Issue #31

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:

- Separation - A "To Do" List
- A Guide to Family Law - The Seminar
- Splitting Superannuation
- Home Schooling
- Long Service Leave in Property Settlements

SEPARATION - A "TO DO" LIST

Some points to keep in mind if you have just separated:

- Keep a diary (particularly for contact arrangements for children).
- Keep a budget.
- If any Real Estate is in joint names (held as joint tenants) look at severing the joint tenancy.
- Check the terms (and appropriateness) of your Will. If you don't have a Will, get one!
- Look at revoking any Power of Attorney to your spouse.
- Identify any exposure you may have to funds being dissipated from joint accounts, joint credit cards, or special payments made on a joint mortgage.

Before all else, get Specialist Family Law advice.

A GUIDE TO FAMILY LAW - THE SEMINAR

Since publishing the book "A Guide to Family Law - Everyday Answers" we have received numerous requests to present Seminars and Conference papers.

We have now developed a one hour FREE seminar presentation that involves PowerPoint, handouts, and copies of the book, to any organisation that would find this of interest to their staff or clients.

The seminar is presented by our Principal, Mr Michael Lynch and is able to be interactive in style and address audience questions that arise.

The seminar is presented FREE of cost.

If you are interested in the seminar being presented to your organisation or clients please contact Amy on 3221 4300, also visit us at www.michaelynchfamilylawyers.com.au.

SPLITTING SUPERANNUATION

The Court recently considered how a property settlement could be achieved when taking into account the need for splitting of Superannuation and achieving a "just and equitable" outcome.

The facts were:

- The Husband and Wife were both 42 years of age.
- They had been married for 19 years and there were 3 children.
- The Husband had Superannuation of approximately \$110,000.00 and the Wife had none.
- The total property pool was \$271,000.00.

The Court determined that the Wife was entitled to 60% of the total property pool, i.e \$162,000.00. In determining how the Wife should receive this entitlement, the Court ordered that:

- The Wife needs realisable assets to house herself and the children.



Approved
Law Society Mediator



- The Wife's 60% entitlement should be comprised of 15% of Superannuation (i.e by way of splitting from the Husband's Superannuation) and 85% of realisable assets.

The Court Ordered that home schooling was not in the child's best interests and Ordered that the Applicant Grandmother should have sole responsibility for the child's long term care, welfare and development and must enrol the child in High School.

Contact details
Michael Lynch Family Lawyers

Principal
Michael Lynch*

Senior Associates
Helen Bryden*

Associates
Emily Wood

Solicitors
Elizabeth Millar

HOME SCHOOLING

The Federal Magistrates Court recently considered a case involving home schooling of a child.

The facts were:

- The Applicant was the grandmother and her Application sought an Order for residence of her grandchild.
- The grandchild had lived with her grandmother since 1995 and had not seen her mother since 1998 or her father since 2000.
- The Applicant Grandmother had converted to Islam 30 years ago and the grandchild was being raised in that religion.
- The Applicant Grandmother wished to home school the child rather than have her attend High School.
- The Applicant Grandmother did not consider there to be benefits for the child in attending school or participating in school life.
- Since the child had lived with the Applicant Grandmother, there was no evidence of School Reports outlining the child's progress or social interaction.

LONG SERVICE LEAVE IN PROPERTY SETTLEMENTS

The determination of a Property Settlement involves identifying and valuing the relevant property and then considering the relevant 'elements of contribution' to determine an appropriate percentage division.

Identifying the property is not always as simple as it may seem.

The *Family Law Act* was recently amended to remove the confusion that had existed with Superannuation. Superannuation is no longer referred to as a "financial resource", but is now defined as "property".

The law regarding the appropriate treatment for long service leave and annual leave in property settlements was set out recently by the Full Court, of the Family Court which stated that "they are not property, only financial resources".

As a "financial resource" it becomes a factor in considering the parties respective "elements of contribution," to then determine an appropriate percentage adjustment.

The Court has stated that it will adopt this view even where the employee spouse is not likely to retire and receive a lump sum payment, in lieu of the leave.

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



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