



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:

- Determining a Property Settlement - Breadwinner v. Homemaker
- Changes in Family Law
- Family Relationship Centres
- Who can bring a Court Application for Residence?
- Determining a Property Settlement - What are the "Future Needs"
- Property Settlement where there is a Child from a previous Relationship
- Specialist Family Law Advice

DETERMINING A PROPERTY SETTLEMENT - BREADWINNER V. HOMEMAKER

In the determination of a property settlement the question often arises as to the appropriate percentage weighting to be given to the "financial contributions" (i.e breadwinner) as opposed to the "non-financial contributions" (i.e homemaker). The Family Court's position is best stated, as follows:

"Evaluating parties" respective contributions where one has been exclusively the breadwinner and one exclusively the homemaker, is difficult. It involves making a comparison between different activities and a comparison between contributions to property and contributions to the welfare of the family. Whilst a breadwinner can be objectively assessed, an assessment of the quality of a homemaker is vulnerable to subjective value judgments. This leads to a tendency to undervalue the homemaker role. There are cases where the performance of the homemaker role has what may be described as "special" features about it, either adding to or detracting from the norm. For example, in the homemaker role there may be responsibilities well beyond the norm, for example, where the homemaker has the responsibility for the home and children entirely, or the care of a special needs child. On the other hand, in the breadwinner role, the facts may demonstrate an outstanding application of time and energy to producing income and what some cases have referred to as "special skills". Within either role there may also be cases that demonstrate a neglect of those responsibilities or a wasting of income or assets".

Every case is different and must be carefully considered on its own facts however, generally the Court will see the homemaker and breadwinner roles in similar terms.

CHANGES IN FAMILY LAW

The Federal Government's Standing-Committee Report on the proposed Family Law Amendments was tabled in Parliament in mid-August 2005. The Amendments are not yet law.

The key recommendations of the Report are:

- Use of the term "equal shared" parental responsibility, rather than the term "joint parental responsibility" to describe the presumption of the sharing of major decisions about a child by both parents;
- An obligation to consider whether it is in the best interests of the child and reasonably practicable for a child to spend "equal time", not just "substantial" time with both parents; and
- The development of Family Relationship Centres.

FAMILY RELATIONSHIP CENTRES

The Federal Attorney-General has announced that the first 15 Family Relationship Centres will open in mid-2006. Organisations are in the process of tendering for the contracts to operate those Centres. In Queensland, the first two centres will be in Townsville and Strathpine.

WHO CAN BRING A COURT APPLICATION FOR RESIDENCE?

The Federal Magistrate's Court recently determined that a former neighbour to a child's Mother was not a person able to bring a Court Application for Residence of the child.





The facts were:

- The Applicant lived next door to the child's mother until 9 months before the mother died.
- The Applicant first met the child's mother (5) years earlier and she and the mother developed a close relationship. The Applicant said that she and the mother would take their children shopping together, for walks in the park and outings together.
- The Respondent was the maternal Aunt.
- The child was placed in the temporary care of the Respondent.

The Court found that the Applicant was not someone "concerned with the care, welfare and development of the child" and therefore was not able to file an Application in the Court. The Court found that it was significant that the mother did not seek to make the Applicant aware that she was in hospital for (4) weeks in the month prior to her death and allowed the child to be placed in foster care during that time.

DETERMINING A PROPERTY SETTLEMENT - WHAT ARE THE "FUTURE NEEDS"

To determine a Property Settlement it is necessary to take into account the parties respective "future needs".

What are "future needs"?

As the name suggests it requires a consideration of the future provision for each of the parties. The potential considerations are vast.

The most common consideration is who has the ongoing primary responsibility for the children.

The Family Court has made it clear that a consideration of the "ongoing care of

children" as a "future needs" component in determining a property division must not be confused with the receipt (by a resident parent) of Child Support.

The Court has stated that:

"The payment of Child Support in no way compensates the custodial parent for the loss of career opportunity, lack of employment opportunity and the restriction on an individual lifestyle which the obligation to care for the children usually entails".

PROPERTY SETTLEMENT WHERE THERE IS A CHILD FROM A PREVIOUS RELATIONSHIP

The Full Court of the Family Court has recently considered the decision of a Trial Judge in a property settlement case, to grant the Wife 60%.

The facts were:

- The property pool was \$94,600.
- The Wife had one child from an earlier relationship.
- The Trial Judge assessed contributions as equal and awarded the Wife a 10% adjustment for "future needs".

The Full Court agreed with the Trial Judges decision in taking into account the Wife's ongoing care of the child, the Wife's capacity for employment and the Husband's modest income.

SPECIALIST FAMILY LAW ADVICE

For Specialist Family and Relationship law advice contact us on (07) 3221 4300 or visit us at www.michaelynychfamilylawyers.com.au.

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