



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:

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- Property Settlements - Measuring Contributions
- Merry Christmas!

WELCOME

Welcome to the latest edition of the Flyer and a special welcome to our new subscribers.

Thank you to all who have recently become subscribers. We have been overwhelmed by the recent positive response.

Congratulations to 5 of our new subscribers who were each lucky winners of a Christmas hamper, valued at over \$100 each.

Merry Christmas!

FAMILY FLYER CIRCULATION

We are delighted to have over 5,000 readers of the Family Flyer.

We would like to spread the Flyer further so if you know anyone who would find the articles of interest please forward the Flyer by clicking on the link below.

BE READY FOR CHRISTMAS - NEW ARTICLE

The statement that "Christmas is the happiest of times and the hardest of times" is never more so the truth than when there are Christmas Day contact arrangements with children.

To help people work through these arrangements we recently produced an Article that was published in various media publications.

For a copy of the article follow this link: "[Coping with Christmas - Timely tips for separated Mums and Dads](#)"

DNA TESTING WILL REQUIRE CONSENT

Men who undertake DNA paternity tests without the consent of a child's Mother will soon be breaking the law.

A new criminal offence is set to be created that prohibits submitting another person's hair, saliva or blood sample for genetic testing without legal authority. The media recently reported that an Australian study of DNA paternity testing this year found just 80% of men tested were the child's Father.

A BIT ABOUT US

Michael Lynch Family Lawyers is a Specialist Family Law Practice that has operated in Brisbane City for 10 years.

Each of our 4 lawyers are focused on providing straight-forward and practical Family Law advice. We do this by providing comprehensive advice in a fixed fee initial consultation.

For those client's who require assistance beyond the initial advice our role is to work with you to develop the best approach to address the issues that exist. This can be done in a number of ways including, negotiating, attending mediation or preparing Court documentation and appearing in Court.

We assist people in all aspects of Family Law, including children's arrangements, property settlement, spouse maintenance, child support, defacto relationships and domestic violence.

If you are involved in a Family Law matter and need assistance contact us on (07) 3221 4300 and make an appointment. For more information visit us at www.michaelynchfamilylawyers.com.au.

CAPITAL GAINS TAX IN PROPERTY SETTLEMENTS

The Family Court has stated that factoring in notional Capital Gains Tax should only be taken into account for calculating a property settlement if the Court Orders the sale of an asset or is satisfied that a sale is inevitable or would probably occur in the near future.





SETTING ASIDE AN ORDER - HOUSE DEMOLISHED

The Federal Magistrates Court recently considered a Wife's Application to set aside a property settlement Order after the Husband demolished the house that was listed for sale.

The Court Order provided that the house be sold and provided details as to how the proceeds were to be divided.

Prior to sale the residence was demolished by the Husband.

The Court was satisfied that circumstances had arisen that "made it impracticable for the Order to be carried out". The property had been devalued through no fault of the Wife. The Court varied the Orders to compensate the Wife for her loss.

PROPERTY SETTLEMENTS - MEASURING CONTRIBUTIONS

The Full Court recently confirmed that a Trial Judges finding that a wife had made a 90% contribution to the property was reasonable.

The facts were:

- The property at separation amounted to \$9,000.
- During the marriage, the parties had lived rent-free courtesy of the wife's family.
- After separation, the wife then received inheritances and the property at the time of the Hearing was valued \$833,833.00.
- At the time of Hearing the wife had the sole care of (3) of the (4) children from the marriage.

- The eldest child lived with the Father. The Father made "little or no" Child Support payments to the wife.

The Husband Appealed against the 90% contribution assessment to the wife, arguing that the Trial Judge had failed to take proper account of his contributions.

The Full Court dismissed the Appeal and in doing so provided a good example of how to assess contributions in a property settlement, i.e.:

- Parties' contributions should be assessed from the date of co-habitation, throughout the marriage and post separation to determine the contribution-based entitlement to property settlement.
- The Trial Judge has a wide discretion when evaluating each parties entitlement to property settlement
- To overturn a discretionary judgment a party "must establish that the Trial Judge made a mistake of fact or that they placed inappropriate weight on some aspect".

MERRY CHRISTMAS!

We will be closed from 5.00pm Thursday, 22 December, 2005 and will re-open at 8.30am on Tuesday, 3 January, 2006.

Seasons greetings and best wishes for the New Year from all of us at Michael Lynch Family Lawyers.

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Approved Law Society Mediator

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