



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:

- What is a Pre-Nuptial Agreement?
- Associate - Appointment
- Making Child Contact Happen
- Personal injury payments in Property Settlement
- Assistance

WHAT IS A PRE-NUPTIAL AGREEMENT?

A Pre-Nuptial Agreement is a type of Binding Financial Agreement.

Since 2002, the Family Law Act has allowed for enforceable Agreements to be prepared between parties to a marriage regarding the division of property, these are called Binding Financial Agreements.

Many couples see considerable benefits in entering into an Agreement to regulate the financial aspects of their marriage.

Couples may enter into Financial Agreements either before marriage (Pre-Nuptial), during marriage or after divorce.

Agreements can be made in relation to:

- How property is to be dealt with in the event of marriage breakdown, and/or
- Spouse maintenance.

The effect of such an Agreement is to oust the jurisdiction of the Court in relation to the matters covered in the Agreement.

To be binding the Agreement must be in writing, signed by both parties, specifically refer to the legislation and have annexed to it certificates of independent legal advice for both parties.

Financial Agreements can be terminated by a further Agreement or an Order of the Court. There are a range of circumstances (although limited) where the Court may set aside an Agreement.

ASSOCIATE - APPOINTMENT

We are pleased to announce the recent promotion of Emily Wood as Associate at our office. Emily practices exclusively in Family and Relationship Law.

Emily's elevation and expertise reinforces our position as one of the largest Specialist Family Law firms in Queensland.

Congratulations Emily!

MAKING CHILD CONTACT HAPPEN

The Federal Magistrates Court recently considered a case involving a 15 year old boy where the Father sought contact and the Mother, stating that she was unable to compel the child to attend, sought no specific contact Orders.

The facts were:

- Consent Orders were made in 2003. In 2004, the Mother brought an Application to vary the Orders.
- At the date of Trial there were 3 children aged 18 years, 15 years and 10 years.
- The case related to the second child, as the eldest was 18 years and the youngest was agreeable to regular contact with his Father.
- The Order provided that the Father and son have contact each alternate weekend. The eldest child had complied with contact Orders until he was 17.
- There had been Contravention proceedings as previously the 15 year old had not attended contact.
- The Mother said the contact Orders were no longer appropriate as the 15 year old child was reluctant to go on contact and in light of his size it was beyond her power to compel him to go. The Mother thought the child was old enough to negotiate with his Father.
- The Father did not agree that the child should choose.



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• The Family Report concluded that the child was still prepared to see his Father and recommended that the Mother should continue to encourage the child to attend contact according to the Orders given, but if she had difficulties (it was recommended) that the Order reflect her right to contact the Father and ask him to collect the child.

- In 1991 the Husband had an industrial accident and received a compensation payment of \$350,000;
- At the Trial the total matrimonial property was \$475,000;
- Of the Husband's payment approximately half was spent on the house, \$55,000 was spent on equipment and \$40,000 was loaned to a friend that received only a nominal repayment;
- After the accident the Husband was moody, depressed and prone to outbursts of anger. The Wife submitted that this made her homemaking contribution more onerous;

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- The Court determined that:
 - The loan was not reckless dissipation however would not enhance the Husband's contribution;
 - A significant component of the damages payment was for "pain and suffering" and that is a contribution above the norm;
 - The Court did not make any contribution to the Wife for the alleged oppressive environment;
 - For "contributions" the Husband received a 7.5% adjustment;
 - Because of the Husband's poor employment prospects he received an additional 10%;
 - The Husband received 67.5% and the Wife 32.5%.

The Court determined that there was a high likelihood of Contravention proceedings continuing if the Orders remained in their present form.

The Court Ordered that:

- The child have contact with the Father every third weekend from after school Thursday to the commencement of school Monday.
- If the child resists going on contact the Mother must inform the Father and request him to pick up the child or negotiate contact with the child.
- The Order will remain operative until the child reaches 17 years of age.

**PERSONAL INJURY PAYMENTS
IN PROPERTY SETTLEMENT**

The Federal Magistrates Court recently determined a property settlement where the Husband had received a large personal injuries compensation payment.

The facts were:

- The parties married in 1979 and separated in 2002;
- There were 6 children of the marriage (3 under 18 years);

ASSISTANCE

If you need assistance with a Family Law matter call us on (07) 3221 4300 or visit us at www.michaelyllynchfamilylawyers.com.au.