



# 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 - "A Guide to Family Law" - 6 September 2006
- Setting aside a Property Settlement Court Order
- A drop in house value after Court Hearing
- Contravention of a Court Order - What is a reasonable excuse?
- Penalties for failing to comply with a Parenting Order
- Child Support - Variation of Agreement
- Family Flyer
- Assistance

## FREE SEMINAR - "A GUIDE TO FAMILY LAW" - 6 SEPTEMBER 2006

We are holding a FREE public Seminar entitled "A Guide to Family Law - Everyday Answers". The Seminar will be presented by Accredited Family Law Specialist, Michael Lynch and will include up-to-date information on the new Shared Parenting legislation and the changes to Child Support (that commenced on 1 July, 2006).

The Seminar will be held from 6.00pm - 7.00pm Wednesday, 6 September, 2006 at Windsor Bowls Club, 69 Blackmore Street, Windsor. Places are limited. For further information please visit our website at [www.michaelynchfamilylawyers.com.au](http://www.michaelynchfamilylawyers.com.au). Feel free to tell anyone you know who may be interested.

To register telephone Michelle (07) 3221 4300 or email [law@mlynch.com.au](mailto:law@mlynch.com.au).

## SETTING ASIDE A PROPERTY SETTLEMENT COURT ORDER

There is no time limit for making an Application to "set aside" a previous property settlement Court Order.

Applications to set aside property settlement Court Orders must be considered carefully however as the scope within which to bring such an Application is limited.

## A DROP IN HOUSE VALUE AFTER COURT HEARING

The Full Court of the Family Court has recently had to consider a case where a Trial Judge Ordered that the Husband make a cash payment to the Wife, based upon the parties agreed value for the matrimonial home.

Following the making of the Court Order the parties sold the house, it sold for \$100,000 less than the value that had been agreed at the Final Hearing.

One aspect of the Husband's Appeal was that the Court Order should have provided a percentage division of sale proceeds, to accommodate any fluctuation in sale price.

The Full Court agreed that the justice of the case required that the property division should be made by a percentage division rather than the fixed cash amount, as to ignore the reality of the reduced sale price would allow one of the parties to receive more than their fair share of the asset pool at the expense of the other.

## CONTRAVENTION OF A COURT ORDER - WHAT IS A REASONABLE EXCUSE?

If a Court decides that a person has failed to comply with a Court Order, it will consider whether the person had a reasonable excuse for contravening the Order. Some examples of reasonable excuses that may satisfy a Court include:

- The person did not understand the obligations imposed by the Order; or
- The person reasonably believed that the contravention was necessary to protect the health and safety of a person, including the person who contravened the Order or the Child; and
- The time of the contravention was not longer than what was necessary to protect the health and safety of the person who contravened the Order, or the Child.

## PENALTIES FOR FAILING TO COMPLY WITH A PARENTING ORDER

A Court can only penalise someone for failing to comply with a Parenting Order if another person files a Contravention Application alleging the person did not comply with the Order.





If a Court finds that one of the parties has failed to comply with a Parenting Order without "reasonable excuse", it may impose a penalty. Depending on the particulars of the case and the type of Contravention, a Court may:

- Order them to attend a Post-Separation Parenting Program;
- Compensate the other parent for time lost with a child as a result of the Contravention;
- Require the person to enter into a Bond;
- Order that the person pay all or some of the legal costs of the other party;
- Order that the person pay compensation for reasonable expenses lost as a result of the Contravention;
- Require the person to participate in Community Service;
- Order the person to pay a fine; or
- Order that the person be imprisoned.

A Court may also make a further Order that changes, varies or suspends the Order or renews some or all of an earlier Order or adjourns the case to allow a person to apply for a further Order that alters the Parenting Order.

### CHILD SUPPORT - VARIATION OF AGREEMENT

A Father has successfully reduced the amount of child support he pays for 2 children because his employment prospects have changed since a Child Support Agreement was made.

The facts were:

- A Child Support Agreement was made between the parties. The Father agreed to pay child support of \$2,200 per month as well as health insurance and all educational expenses.

- The Agreement was made at a time when the Father, a high profile journalist, anticipated he would earn \$150,000 per year.
- Contrary to his expectations, the Father's annual income was \$47,000 per year and he had to draw on savings to meet his living expenses and maintain his child support obligation.

The Court Ordered that:

- Once Child Support Agreements are made they take effect as a Departure Order from the Agency's administrative assessment.
- For a Child Support Agreement to be varied by the Court, the Court must be satisfied that there has been a change that gives rise to one of the grounds for departure.
- The Husband's child support obligations were unjust and inequitable.
- The Agreement was varied so the Husband was required to pay \$1,800 per month in child support.

### FAMILY FLYER

If you know anyone who might like to receive the Family Flyer forward the Flyer by clicking on the link below.

### ASSISTANCE

If you need assistance with a Family or Relationship Law matter call us on (07) 3221 4300 or visit us at [www.michaellynchfamilylawyers.com.au](http://www.michaellynchfamilylawyers.com.au).

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