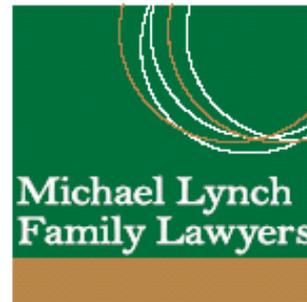


family flyer



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:

- We are moving!
- Wills - when does a beneficiary receive?
- Changes in Child Support
- Capital Gains Tax in Property Settlements
- Court Statistics
- What is "family violence" under the Family Law Act?
- Filing Fee Increase
- Financial Impact of Divorce
- Assistance

WE ARE MOVING!

This year has proven to be a big one for us. Not only have we celebrated our 10th birthday but on Monday, 27 November, 2006 we shall move premises (for the first time in 10 years!).

Our new address and contact details are:

Level 6, 193 North Quay
 Brisbane Qld 4000
 (Cnr North Quay & Herschel Street)
 PO Box 12027, George St, Qld, 4003
 Tel: (07) 3221 4300
 Fax: (07) 3221 9454
 Email: law@mlynch.com.au

WILLS - WHEN DOES A BENEFICIARY RECEIVE?

The Queensland Supreme Court recently considered the validity of a clause in a Will, stating that one of the beneficiaries (one of 2 daughters of the deceased) not receive her entitlement until either she divorced her current husband, or the current husband died. The clause further stated that if the gift failed, the entitlement was to pass to a Church.

The daughter in question challenged the condition in the Will, alleging that the condition was invalid as it was contrary to public policy.

The Court found that the condition was not against public policy, stating that:

- The beneficiary had no obligation to divorce her Husband.
- Society's attitudes towards divorce had changed and therefore this was no longer a large public policy issue.

- A condition that the gift not be taken until the death of the current husband cannot be questioned.

There was scope to bring an Application to the Court where adequate provision had not been made under a Will for the proper maintenance and support for a deceased person's child.

CHANGES IN CHILD SUPPORT

If you are struggling with understanding Child Support don't feel too bad, you are in good company.

The Senate committee conducting the Inquiry into the proposed changes to the Child Support legislation have recently been advised by Australia's peak legal body, the Law Council of Australia, that the new laws are too complex, stating that "if a group of highly experienced Lawyers could not work out what some of the new clauses meant, what hope did their clients have?"

They went on to say that "the present scheme is almost impenetrable to the average person. The new scheme is going to be no less transparent and possibly even more complicated. It may achieve better outcomes, but being able to understand and follow how it gets to those outcomes is going to be a considerable challenge".

CAPITAL GAINS TAX IN PROPERTY SETTLEMENTS

Recent Family Court decisions have stated that for Capital Gains Tax to be included in a property settlement (as a liability) there must be an intention by the owner of the property to sell (the asset) in the foreseeable future, or a significant risk that it will have to be sold in the short to mid term.





The facts of one such case considered by the Court were that:

- The Husband was the operator of an equipment hire business and he stated in his evidence that it was his intention to continue operating and developing the business however he wanted to include a Capital Gains Tax component (for the sale of his business) in determining the value of the matrimonial property pool.
- The Wife said that the Capital Gains Tax should not be included as the Husband had clearly inferred that he intended to retain the factories as an investment rather than to sell them.

The Court determined that the factories were acquired as investments and that there was no intended sale for any of them in the foreseeable future and therefore any potential Capital Gains Tax would not be included.

COURT STATISTICS

In Australia, 76% of people who separate come to the Courts for their divorces only. They manage to agree between themselves about property and the arrangements for their children.

Of the remaining 24% who resort to the Court, about 5% proceed to a Final Hearing before a Judge.

(Source: Family Court: Courtside)

WHAT IS "FAMILY VIOLENCE" UNDER THE FAMILY LAW ACT?

The new "shared parenting" legislation that commenced on 1 July, 2006 provides that for all parents there is a "presumption" of "shared parental responsibility", except if there is "family violence".

The definition of "family violence" is "a person that reasonably fears for, or reasonably is apprehensive about, his or her personal wellbeing or safety in particular circumstances if a reasonable person in those circumstances would fear for, or be apprehensive about, his or her personal wellbeing or safety".

The introduction of the "reasonable person" test elevates the test for "family violence" higher than it has previously been under State legislation.

FILING FEE INCREASE

On 1 October, 2006 the Federal Magistrates Court increased the filing fee for a Divorce Application to \$405.

FINANCIAL IMPACT OF DIVORCE

A recent study has tracked the financial impact of divorce on men and women.

The report estimates that today's divorce rate is as high as 48% and by 2015 over half of all marriages will end in divorce.

The report also highlights that the average journey for men and women beyond separation is quite different.

Men are more likely to end up in a childless household, even if they enter into a new relationship. Women are less likely to enter a new relationship and are more likely to be a sole parent.

Whilst men will suffer a marginal decline in living standards, for women the decline will be sharp. Women are less likely to accumulate wealth after a divorce and they will enter retirement with negligible Superannuation.

Source: AMP.NATSEM

ASSISTANCE

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

Contact details
Michael Lynch Family Lawyers

Principal
Michael Lynch*

Senior Associates
Helen Bryden*

Associates
Emily Wood

Solicitors
Elizabeth Millar

*Queensland Law Society
Accredited Family Law Specialists

Telephone: 07 3221 4300
Facsimile: 07 3221 9454
Email: law@mlynch.com.au
Web: www.michaelynychfamilylawyers.com.au

Address: Level 6
193 North Quay
Brisbane Qld 4000

Post: PO Box 12027
George St, Brisbane Qld 4003



Approved
Law Society Mediator

Copyright © 2007

This document contains general comments only and should not be relied upon as specific legal advice. Readers should contact this Office for detailed information or advice on any topic in this document. Changes to the law occur regularly, no responsibility for any loss or damage caused to any person acting in reliance on this document shall be accepted by the Principal of this Office. No part of this document may be included on any document, circular or statement without our written approval.