



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:

- Plenty of Articles!
- Splitting Super in Property Settlements
- How to change a Court Order?
- Superannuation Funds acquired on Divorce
- What you need to know about Parenting Plans
- Merry Christmas!

PLENTY OF ARTICLES!

Visit our library of back issues of the Family Flyer. We have over 50 issues accessible FREE under the "Family Flyer" link on our website at www.michaelylchfamilylawyers.com.au.

You will find a wealth of easy-to-understand and practical information.

SPLITTING SUPER IN PROPERTY SETTLEMENTS

In determining property settlements, Superannuation can be split to effect a fairer outcome.

Determining the value of Superannuation interests and how best to effect the split are complex issues however. Some points to be aware of are:

- It is easy to be misled by the estimated value on an Annual Superannuation Member Statement. The Family Law Act uses a different valuation method to that used by the funds themselves.
- In Self-Managed Superannuation Funds the Trustees are often the parties involved in the property settlement. In those circumstances the Trustees must decide where the money for the split must come from. This can raise tax issues if fund assets are sold.
- A Self-Managed Superannuation Fund cannot have a single member Trustee. This limitation can be overcome however if a company is the Trustee, as companies can have a sole director.

HOW TO CHANGE A COURT ORDER?

For a Final Court Order (that specifies children's arrangements) to be varied requires the Court to find that there has been a "significant change in circumstances".

For the new "Shared Parenting" laws (that commenced on 1 July, 2006) the Government has specifically provided that the change in law does not constitute a "significant change in circumstances". So what does?

The Family Court's position has been stated on a number of occasions, i.e:

- The Court should have regard to any earlier Order and to the reasons for and information upon which that Order was based.
- It should not lightly entertain changing a Court Order as to do so would invite endless litigation.
- There needs to be a changed circumstance being a new factor which was not disclosed which would have been significant.
- The Court will consider the importance or seriousness of the issues raised and the impact that they may have on the children.
- The change must be of consequence and more than what would occur by the passage of time or in the usual course of human activity.

In a recent case the Mother sought a change of the Court Order and contended that a number of significant changes justified a variation, including:

- She had re-partnered and now had step-children.
- That the 3 children (aged 15, 13 and 12 years) wanted a change.
- There had been a breakdown in the relationship between the Father and the 15 year old daughter.

The Father opposed the Mother's Application asserting there had been no relevant change.





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The Court found that some of the circumstances advanced by the Mother fell far short of being "significant" and were ones that had simply occurred by "the passage of time or in the usual course of human activity".

The Court was satisfied however that some of the issues when taken collectively were "significant", including:

- The Mother's re-partnering; and
- Serious concerns about the nature of the children's relationship with their Father.

SUPERANNUATION FUNDS ACQUIRED ON DIVORCE

There is a new exception to the prohibition on Superannuation Funds acquiring an asset from a related party. The Rule only applies where the acquisition of the asset occurs as a result of the marriage breakdown of a member of the acquiring fund.

This means that assets can be transferred from the Fund of one divorcing spouse to the fund of the other spouse, without breaching the related party prohibitions.

The changes are backdated to 28 December, 2002 so that they match the date of the Family Law Superannuation splitting provisions.

WHAT YOU NEED TO KNOW ABOUT PARENTING PLANS

Parenting Plans were first introduced in legislation in 1996, they were later removed but have now returned with the amendments on 1 July, 2006.

Parenting Plans can deal with a variety of matters, such as, who a child lives with or spends time with, whether parental responsibility is shared or allocated, dispute resolution and other aspects of care for the child.

They are not registered in Court and are not enforceable. Where there is no Court Order the terms of the most recent Parenting Plan must be taken into account by the Court when making a Parenting Order.

A Court Order is subject to a Parenting Plan if the Plan is subsequently entered into by the parents. What that means however is that where there is a Parenting Plan made following a Court Order there will no longer be a right to enforce the previous Court Order to the extent that it is inconsistent with the new Parenting Plan. People can only lose the capacity to enforce their existing Parenting Order within the Court system if they agree to this in writing in a Parenting Plan.

In exceptional circumstances, the Court may include in a Parenting Order a provision that it may only be varied by a subsequent Order (and not by a Parenting Plan).

The requirements for a Parenting Plan is that it be in writing, was made between the parents, is signed by the parents and dated.

An agreement is not a Parenting Plan unless it is made free from any threat, duress or coercion.

MERRY CHRISTMAS!

We will be closed 5.00pm Thursday, 21 December 2006 and will re-open at 8.30am on 2 January 2007.

Seasons Greetings and Best Wishes for the New Year from all of us at Michael Lynch Family Lawyers.

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