family flyer

Michael Lynch Family Lawyers

Issue #59

Special Edition - Parenting Plans

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:

- Special Edition
- Parenting Plans

SPECIAL EDITION

This Special Edition Family Flyer is designed to address a number of questions we have recently received regarding Parenting Plans and to highlight tips and traps that exist when considering or preparing a Parenting Plan.

PARENTING PLANS

What are they?

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

A Plan provides a way of documenting children's arrangements other than with a Court Order.

A Parenting Plan is an agreement in writing, that is made, dated and signed by both parents and which deals with arrangements for the children.

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.

When is a Parenting Plan made?

A Parenting Plan can be made at anytime and anywhere, more importantly it should be noted that there is no standard form for a Parenting Plan so it is quite easy for a Parenting Plan to be made even though that may not actually be the intention of all parties, at the time.

A Parenting Plan can be made before or after 1 July 2006, it can be made inside or outside of Australia and it can be made with other people as parties to it other than the child's parents (including a grandparent or other relative of the child).

A Parenting Plan can be revisited and updated to reflect the changes which occur from time to time.

Family Relationship Counsellors or Family Relationship Dispute Resolution Practitioners are legally required to advise parties that they can consider entering a Parenting Plan and where they can get further assistance to develop a Parenting Plan.

Parenting Plans are not registered with the Court and are not enforceable as Court Orders.

A Parenting Plan must be made free from any threat, duress or coercion, although it is important to understand that that is a determination that a Court would ultimately make and depends upon the Courts view of the evidence. Duress is a high legal threshold to establish.

What effect does a Parenting Plan have?

If a dispute between parents arises after a Parenting Plan has been prepared, the Court is entitled to look at the Parenting Plan as a reflection of the parties intention in guiding the Court as to what Order is appropriate.

If a Parenting Plan is made after a Court Order has been made then the Parenting Plan will override the Court Order.

How do you change a Parenting Plan?

A Parenting Pan may be varied or revoked by agreement in writing between the parties to the Plan.

Obligation on Counsellor

A Family Relationship Counsellor or Family Dispute Resolution Practitioner must inform parties that:

- If the arrangements are "reasonably practicable" and in the "best interests" of the child then the child spending equal time with each of them may be an option for them to consider.

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- If equal time is not appropriate but it is "reasonably practicable" and in the "best interests" of the child for the child to spend "substantial and significant time" with each of them then they should consider that option.
- Parenting issues should focus on the best interests of the child.
- The matters that may be dealt with in a Parenting Plan are set out in Section 63C (2) Family Law Act.
- What ways there are of resolving disputes and of changing the Plan.
- The Court is able to have regard to the terms of a Parenting Plan when making a Court Order.

Tip

It does not take much for a Parenting Plan to be created, it is difficult for a Parenting Plan to be set aside and the effect of a Parenting Plan (particularly if there is already a Court Order in place) can be significant.

Advice

Anyone considering entering a Parenting Plan should carefully consider their position and obtain Specialist Family Law advice.

More Information

If you require more information regarding the Shared Parenting laws please read Family Flyer - Edition 44, visit www.mlfl.com.au.

Our Service

If you are part of an organisation and would see the benefit in our presenting a seminar on Parenting Plans for your staff training, please contact Michelle on (07) 3221 4300.

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