



family flyer

Michael Lynch
Family Lawyers

Issue #85

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:

- Public Seminar Series
- Increase in De Facto Relationships
- Who's Fault?
- Post-Separation Inheritance
- Splitting Superannuation
- Husband Ordered not to Reconcile!
- Getting a Second Opinion

PUBLIC SEMINAR SERIES

For a practical guide to Family Law come to our Public Seminar Series. "A Guide to Family Law – Everyday Answers" provides a wealth of information in 1 hour for only \$20. There are 3 seminar times to attend:

- Monday, 20 October, 6-7pm at Aspley Australian Football and Sporting Club, 50 Graham Road, Carseldine.
- Tuesday, 28 October, 6-7pm at Oxenford & Coomera Community Youth Centre, 25 Oxenford-Tamborine Road, Oxenford.
- Monday, 10 November, 6-7pm at Riverglenn Conference Centre, 70 Kate Street, Indooroopilly.

Book Now – phone 3221 4300 or visit: www.mlfl.com.au/seminars

INCREASE IN DE FACTO RELATIONSHIPS

New statistics show that there is a dramatic increase in the number of couples living in De facto relationships.

- Between 1996 and 2006 de facto relationships in Australia increased by 63% from 733,000 to 1,193,400.
- In 1996 de facto partners represented 10% of people in a registered marriage or a de facto relationship, this increased to 15% in 2006.
- In 2001, 68% of people in a de facto relationship had never been married.

WHO'S FAULT?

The Family Law Act is based on a "no fault" system.

To proceed with a Divorce Application the Family Law Act requires that there be a "irretrievable breakdown" in the marriage which is defined as being 12 months separation.

Separation can either be "under the one roof" or a "physical" separation.

To proceed with resolving children's arrangements or financial matters (such as property settlement and spouse maintenance) there needs to be separation but there is no further time requirement.

In considering a Divorce Application or financial settlement the Court does not consider "fault".

Other countries in the world do have Family Law systems based on "fault".

POST-SEPARATION INHERITANCE

Whether an inheritance received after separation is included in the asset pool for property settlement, depends upon the circumstances of every case.

The Court recently decided that a Husband's inheritance of \$65,300, 2 years after separation, should be included in the asset pool. In other cases post-separation inheritances have not been included in property settlements. In what circumstances should a post-separation inheritance be included and in what circumstances should it not?

In a situation where (for example) there are no assets other than the inheritance of the Husband, and the Wife was the main financial support and had the role as homemaker and parent, then the Court would decided that the settlement should be made in the Wife's favour from the inheritance.

However, if there are sufficient funds from which a property settlement can be made, then the Court would normally treat the post-separation inheritance as an entitlement of the spouse who received it.

The non-receiving spouse cannot be regarded as contributing to an inheritance received after a relationship has ended, except in unusual circumstances.





SPLITTING SUPERANNUATION

The law that applies for the determination of a property settlement in a marriage is different to that which applies in the determination of a property settlement for a de facto relationship.

The different laws create a number of significant legal differences one of which is that superannuation is property for a matrimonial property settlement but is not property for a de facto property settlement.

The consequence of this is that superannuation can be split in a matrimonial property settlement but cannot be split in a de facto relationship property settlement.

There is currently draft legislation before Federal Parliament aimed at including de facto relationship property settlements within the jurisdiction of the Family Law Act however that will only apply to those States that have referred their powers to the Federal Government and the legislation has not yet been approved by the Federal Government.

HUSBAND ORDERED NOT TO RECONCILE!

The Court recently considered whether a Mother should be allowed to remain in her new location with the children, or relocate closer to the Father, who had not yet come to terms with the separation.

Facts

- The Father and Mother had been married for 7 years and had two children aged 5 and 2.
- Before the separation the family lived on a farm rent free owned by the Father's parents in exchange for working on the farm.
- The Father also worked in the agricultural and earthmoving industries, working up to 75 hours most weeks.
- The Mother claimed the Father refused to spend Sundays with the family or go on holidays with them.

- Over the Christmas break the Mother relocated herself and the children away from the home and the area the family had lived in.
- The Father sought orders that the Mother live within 30km of his farm. He argued that he was travelling 4-5 hours to see his children, costing him \$400 in fuel.
- The Mother wanted to stay at her new location saying she had a support network there and that she had previously felt isolated and controlled by the Father.
- The Father, his family and friends were prominent in the town they lived in and had pressed the Mother to reconcile with the Father.

Court Order

- The Father's proposal of 30km was too close to his family. The Mother was ordered to relocate within 60km of the Father as it would be difficult for the Father to relocate his business.
- The Father was restrained from pressuring the Mother to reconcile or discuss reconciliation.
- The children spend "substantial and significant time" with their Father, due to the Father's work priority, this included:
 - o Thursday after school to Sunday 5pm in alternative weeks.
 - o Thursday after school to Friday before school on other weeks.

GETTING A SECOND OPINION

Family Law is a complex and ever changing area of law.

All of the lawyers at Michael Lynch Family Lawyers practice exclusively in Family and Relationship Law. We are often requested to provide a second opinion on legal advice people have received elsewhere.

We are happy to assist in providing this specialist assistance and have a fixed-fee initial consultation of \$275.00 (including GST).

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