



family flyer

Michael Lynch
Family Lawyers

Issue #117

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:

- IT - Formatting
- Seminar Series – On Now!
- Setting Aside Transactions
- “Close-up” Edition
- Borrowing Capacity is not Property!
- Interim Spouse Maintenance
- What is a Conciliation Conference?

IT – FORMATTING

IT enhancements were made to the Family Flyer over the weekend – regrettably this led to readers receiving a re-run of Edition 116 – our apologies!

Hopefully, the improvements will overcome the formatting problems that were occurring in some software systems.

If problems continue – please let us know.

SEMINAR SERIES – ON NOW!

DON'T MISS your chance to get an easy understanding of Family Law! Each seminar provides a wealth of information for ONLY \$20! To be up-to-date with the recent changes in shared parenting, property settlements and much more, book a seminar near you:

- Tuesday, 2 March – 6-7.30pm at Michael's Oriental Restaurant & Function Centre, 223 Padstow Rd, Sunnybank
- Wednesday, 3 March, 6-7.30pm at Pathways Community Library, 1 The Corso, North Lakes
- Tuesday, 9 March, 6-7.30pm at Wantima Country Club, 530 South Pine Rd, Eatons Hill
- Wednesday, 10 March, 6-7.30pm at Runcorn Tavern, 124 Gowan Rd, Runcorn.

BOOK NOW! – Ph 3221 4300. For more information visit www.mlfl.com.au/seminars

SETTING ASIDE TRANSACTIONS

What happens when after separation a spouse sells an asset 'below' value, or takes out a big loan from a relative?

In 'suspicious' transactions that result in a reduction of the matrimonial property, the Court has the power to 'set aside' the transaction – as if it hadn't happened!

“CLOSE-UP” EDITION

Since the Shared Parenting legislation commenced in 2006, there has been much debate as to whether it is the best method. A recent landmark Report – to the Government – reviewing the custody laws recommends wide-ranging change – to find out more, read this week's close-up - [“Parenting Laws – What's Next?”](#).

BORROWING CAPACITY IS NOT PROPERTY!

In a recent case, the Court made it clear that a spouse's capacity to borrow a certain amount of money cannot be added to the property pool in a property settlement.

It was described by the Court as 'nonsense' to make an Order on the prospect of obtaining loans or gifts from a partner's parents for money, with no guarantee whether it would be provided.

In considering the matter, the Court also confirmed that a spouse's capacity to borrow could not be included when calculating the amount of child support a parent should pay.



INTERIM SPOUSE MAINTENANCE

When couples have different incomes, it is possible for the lower income earning spouse to seek reasonable financial support from the other spouse – this is known as “Spouse Maintenance”.

Determining what is ‘reasonable’ is always a challenge. The Court recently considered such a situation:

The Facts:

- The Wife, aged 68 and the Husband, aged 70 had been married for 6 years. They were both retired.
- The Husband had an income of \$600 per week from a Superannuation fund and \$40 per week from casual employment, as well as interest from his investments. Once expenses were taken into account, he was left with \$570 each week.
- The Wife, who had health difficulties, wanted to claim spouse maintenance payments of \$300 each week.
- The Wife had a total income of \$471 for the previous year. To afford her living expenses she borrowed \$30,000 from her daughter and \$3000 from her brother.

Court Order:

- The Husband was Ordered to pay the Wife \$300 each week for the following 11 months, until the final hearing.

WHAT IS A CONCILIATION CONFERENCE?

A Court Application for property settlement follows several standard steps, one of those is a compulsory Court Mediation, this is called a Conciliation Conference. This Conference provides both parties with the opportunity to try and reach an agreement to avoid further costs and delays. The Conference is conducted by a Court Registrar.

Prior to the Conference, the parties must exchange documents, including:

- 3 most recent tax returns and assessments.
- Superannuation documents for each of the parties’ superannuation interest.

Additionally, the parties should also attempt to:

- Reach agreement on identifying and valuing the relevant property.
- Isolate the issues in dispute.
- Investigate settlement options, and negotiate.

During the Conference, the parties’ solicitors will outline to the Registrar the parties’ assets and liabilities and the parties’ entitlement. If an agreement is reached at the Conference, Consent Orders can be prepared and provided to the Registrar, to formalise the agreement.

Issue #117

Contact details

Michael Lynch Family Lawyers

Principal

Michael Lynch*

Senior Associates

Helen Bryden*

Kirstie Colls*

Associates

Elizabeth Millar

Amelia Trotman

Solicitors

Clare McCormack

*Queensland Law Society
Accredited Family Law Specialists

Telephone: 07 3221 4300

Facsimile: 07 3221 9454

Email:

Web: www.mlfl.com.au

Address: Level 6

193 North Quay

Brisbane QLD 4000

Post: PO Box 12027

George St, Brisbane Qld 4003



Copyright 2008

This document contains general comments only and should not be relied upon as specific legal advice. Readers should contact this Office for a 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.