



# family flyer

Michael Lynch  
Family Lawyers

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## 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:

- New Seminar Series
- “Close-up” Edition
- Separation – Children’s Needs
- What is an Interim Hearing?
- What is the Date of Separation?

## NEW SEMINAR SERIES

Our next public Seminar Series will be in October. If you are after easy-to-understand explanations to the legal challenges of separation, don’t miss these seminars!

Our public Seminar Series is presented by our Principal, Michael Lynch. Each seminar will run for 1½ hours and provide information valued at more than \$500 – for ONLY \$20!

### “7 Secrets to Protecting your Assets”:

- 20 October 2009: 6.00pm – Eight Mile Plains; and
- 27 October 2009: 1.00pm – Brisbane City

### “Surviving Separation”:

- 21 October 2009: 6.30pm – Indooroopilly; and
- 28 October 2009: 6.00pm – Calamvale

More details coming soon!

## “CLOSE-UP” EDITION

Since the changes to the defacto property settlement legislation in March this year, we have received many enquiries about defacto relationships. We have broadly addressed this in our earlier “Close-up” article (February 2009) entitled [‘Developments in Property Settlements for Defacto Relationships’](#). This week’s “Close-up” looks at [‘What is a Defacto Relationship?’](#)

## SEPARATION – CHILDREN’S NEEDS

Children react differently to their parent’s

separating, depending on the children’s age. The different reactions between children of different ages have been explained by psychologists to be due to cognitive maturity i.e. the older the child is, the more likely they are going to understand the reasons for the separation.

Here are some of the different needs that have been identified for children of different age groups:

### Infants:

- Predictability
- Time with parents who nurture them
- Parents who play with them, listen carefully to their efforts to communicate and keep them safe
- Visiting schedules involving minimal change

### Teenagers:

- Minimal daily stress in their life
- Parents available daily to listen and provide support
- Predictable routines, consistent rules and expectations
- Parents who are able to supervise them and take interest in their lives
- Time and space for them to work out their own reactions to the separation
- Flexibility in arrangements to allow them to participate in normal adolescent social activities and school events.



## WHAT IS AN INTERIM HEARING?

If someone has separated and an urgent dispute arises that requires a quick short term solution until the Court can conduct a Final Hearing, an application to the Court for an Interim Hearing can be made.

An Interim Hearing will not be allocated for more than a maximum of (2) hours of Court time. It is therefore an abbreviated form of a Court Hearing. An Interim Hearing can occur in many types of situations, but most commonly it is for:

- Occupation of the matrimonial home;
- Children's living arrangements; or
- Injunctions to protect property.

An Interim Hearing is based on Affidavits and does not usually involve direct oral evidence from the parties.

An Affidavit is a document used in Court proceedings, which provides written evidence setting out the facts of a person's situation.

## WHAT IS THE DATE OF SEPARATION?

When couples separate, the first issue to determine is the date of separation. This is often not as clear as it may seem. Sometimes this can be anywhere from months apart, to years apart. The separation date is crucial in determining the property pool. The Court recently considered a case where the separation date in dispute, was 4 years apart.

### Facts:

- The Wife was 44 years old and the Husband was 48. The couple had one 14 year old child.
- The Wife claimed separation occurred in 2002. The Husband argued separation occurred in 2006.
- The Wife claimed that they had separated and continued to live under the one roof.
- The Wife was away overseas, for her employment for periods of 50 to 100 days at a time, during the 4 year period.
- The Wife said she did not proceed with a divorce in 2002 because she could not afford the costs.

### Court Found:

- The Husband and Wife were not physically separated.
- The Wife's absences were found to create a dependence on the Husband that was inconsistent with the 2002 separation date.
- In 2002, the Wife received bonuses from her employer, this was inconsistent with her claim that she could not afford legal costs for a divorce.

### Court Order:

- The Wife's evidence was less credible than the Husband's evidence.
- The couple separated (according to the Husband's claim) in 2006, not in 2002.

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