



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 Senior Associate!
- “Close-up” Article
- The Cost of an Affair
- Property Settlement – Who Benefits from a Gift?
- Getting a Second Opinion
- Merry Christmas

NEW SENIOR ASSOCIATE!

We are pleased to announce the recent promotion of Kirstie Colls to Senior Associate at our office. Kirstie practices exclusively in Family and Relationship Law.

We also congratulate Kirstie on recently being awarded Accreditation by the Queensland Law Society as a Family Law Specialist. For more information on the significance of Specialist Accreditation visit

www.mlfl.com.au/services/specialists.

Michael Lynch Family Lawyers now have 3 Accredited Family Law Specialists and Kirstie’s elevation and expertise reinforces our position as one of the largest Specialist Family Law firms in Queensland.

Congratulations Kirstie!

“CLOSE-UP” ARTICLE

This week’s article looks at compulsory mediation and particularly if you are wanting to file a Court Application in a parenting matter - [‘What is a Section 60I Certificate?’](#)

THE COST OF AN AFFAIR

Property settlements often involve the situation where a spouse wants money that the other spouse has spent “added back” into the property pool. In some cases this has been for money gambled away or money wasted for the benefit of one party. In a recent case the money spent was by the Husband, on his mistress. The Wife argued that the money spent on the Husband’s mistress over 11 years should be ‘added back’ into the property pool.

The Facts:

- The couple were married for 29 years, there were 3 adult children of the marriage.
- The property pool was \$3 million.
- The Wife was not working due to health reasons. The Husband’s income averaged \$375,772 each year, however he had recently been made redundant.
- The Husband had a mistress during his marriage with the Wife, and he now lived with her.
- The Wife argued that without her knowledge or consent the Husband, during their marriage, had provided financial support to his mistress. The Wife said that the financial support amounted to approximately \$32,776 and that amount should be ‘added back’ into the property pool.
- The Wife also wanted a percentage adjustment in her favour for the impact on her role in the marriage, as a consequence of her Husband’s affair over 11 years. She argued it resulted in her having a more onerous role as the Husband was often away and the family did not go on holidays as frequently.
- The Husband argued that he did not support his mistress, except for the last 3 years of their marriage and that it did not amount to more than \$30,000.
- The Wife sought 65% of the property. The Husband proposed that the Wife receive 41%.



Court Found:

- The money spent by the Husband to financially support his mistress should be added back into the property pool.
- There was no evidence to suggest that this was an “exceptional case” or that the Wife’s role was made “significantly more arduous”, as a result of the Husband’s affair.

Court Order:

- \$30,000 was ‘added back’ for the money the Husband had spent on his mistress during the marriage.
- The Wife received a 10% adjustment, which took into account her health, and the impact of the marriage on her employment prospects.
- The Wife received 60% and the Husband 40%.

PROPERTY SETTLEMENT – WHO BENEFITS FROM A GIFT?

When a gift is received by a couple, which spouse should receive the benefit for it in a property settlement?

When determining a property settlement the Court is required to consider the “contributions” made by each spouse. This includes “financial contributions and non-financial contributions”.

Frequently the parents of one of the spouses will provide a financial gift to the couple, which raises the question as to whether that spouse should receive a “percentage benefit” for that contribution?

The Family Court has long held that “where there has been a gift or advance by a relative to

one of the parties to the marriage, the first step is to determine the ownership of the benefit, i.e. whether the parent giving the gift intended to benefit themselves, the parties, or one of the parties”.

Where a gift is made solely to one spouse (e.g. a gift by parents to their daughter) and that spouse applies the property to the marriage, that is a direct financial contribution solely by that party and will be assessed in that way.

In other cases, if the evidence shows that the gift was intended to benefit both spouses then the Court will most likely treat that as an equal contribution by both of them.

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 solely in Family and Relationship Law and 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.

If you would like a second opinion, call us on (07) 3221 4300 to make an appointment.

MERRY CHRISTMAS

We will be closed over the Christmas period from 5pm Wednesday, 23 December 2009 until 8.30am Monday, 4 January 2010.

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

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