



family flyer



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 – Ending Soon!
- “You’re Served!” – via Facebook?
- “Close-up” Edition
- Spouse Maintenance
- Child Support: Recovering Payments

PUBLIC SEMINAR SERIES – ENDING SOON!

Welcome to new readers of the Family Flyer who have joined after attending one of our recent Seminars.

If you haven’t attended one of our seminars, don’t miss out on the opportunity to get useful legal information and advice on separation and children’s arrangements. Each seminar provides a wealth of information - valued at over \$500 - but for ONLY \$20! There is also a Special Offer - only for attendees.

Only 2 Seminars to go! - Ph. 3221 4300 or email law@mlynch.com.au to book your seat!

“Separation & Children”:

- Tuesday, 31 August, 6-7pm - Redlands Sporting Club, Anson Rd, [Birkdale](#).
- Wednesday, 1 September, 6-7pm - The Holland Park Hotel, 945 Logan Rd, [Holland Park](#).

“YOU’RE SERVED”! – VIA FACEBOOK?

Social networking sites are used more than ever today, providing instantaneous communication – but will the Court go so far as to consider whether a Court Application can be ‘served’ through Facebook?

In a recent paternity dispute case, the Mother instructed her solicitor to write to the alleged Father on various occasions, however no response was provided.

Evidence was provided to the Court by the Mother, that the alleged Father frequently used Facebook, so the Court was satisfied that by the Mother sending the Court Application through his private site, that he had been served.

“CLOSE-UP” EDITION

Property Settlements can be a costly process, and involve the likely costs of re-establishment and attaining valuations – but what about the hidden costs of transferring property and businesses? Does the Court consider this when making a property split? Read more in “Hidden Costs”.

SPOUSE MAINTENANCE

The Court recently had to consider whether a Husband was hiding behind his current Wife’s ‘Trust’ structure, which provided him with an income. Was this enough to make him liable to pay spouse maintenance to his former Wife?

The Facts:

- The Wife, aged 55 and Husband, aged 57 were married for 36 years.
- The Wife and Husband had been separated for 17 years and there had been over 50 Court hearings.
- At a previous hearing, the Court Ordered the Husband to pay the Wife spouse maintenance of \$200 per week.
- The Wife sought Orders to increase the spouse maintenance to \$500 per week. She also wanted the Husband’s father to pay the outstanding spouse maintenance of \$69,800.
- The Wife was on a disability pension and suffered from epilepsy and other medical conditions.
- The Husband’s only source of money was from his current Wife’s Trust structure and a superannuation sum of \$181,579. The Husband’s income from other employment had ceased 11 years earlier.



- The Husband's current Wife had a 'Trust' set up to protect her assets at the time they commenced a relationship. The former Wife argued that this gave the Husband capacity to pay spouse maintenance.

Court Order:

- The Husband did not have the income to afford to pay the Wife spouse maintenance.

CHILD SUPPORT: RECOVERING PAYMENTS

What happens when a man makes Child Support payments and later finds out that he is not the biological parent? The Court recently had to consider such a case and determine whether the man should receive a refund for the 10 years of Child Support payments he had made.

The Facts:

- The Mother and the partner were together for 7 months.
- During the relationship, the Mother had become pregnant to a man she had met on a single occasion. The child was 12 years old at the time of the hearing and since the child's birth, it had been assumed that the partner was the father of the child.
- The partner's name was included on the birth certificate. When the child was aged 2, the couple separated and the partner began making Child Support payments.
- The man continued to have a relationship with the child, under the belief that he was the father. He spent time with the child on weekends and school holidays.

- As the child grew older, there were no physical distinctions of the partner present in the child, which caused the partner to question whether he was the father.
- When the child was 10, the partner asked the Mother to agree to DNA testing. The results showed that the partner was not the biological father.
- The Mother stated that she had, until recently, forgotten the incident with the other man and did not know his name, nor had any contact with him since.
- The partner filed an Application with the Court to recover Child Support payments of \$39,090.
- The Mother had another child, aged 1 and was the sole carer of both children. She worked on a casual basis but had a high amount of debt and did not receive Child Support for the younger child. She had a yearly income of 39,624.

Court Found:

- The child had a close relationship with the Father from an early age and the Mother was in extremely difficult financial circumstances.
- The Mother had not intentionally deceived the partner and she was not in a financial position to repay all the Child Support payments.

Court Order:

- The Mother repay the Child Support amount of \$9,743.30, which was the amount that had been paid after the DNA testing.
- Of the amount, \$3,000.81 to be repaid within 6 months and the remaining \$6742.42 to be paid the following 18 months.

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