



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:

- “Close-up” Edition
- FREE “Guide to Family Law”
- Q&A
- “But you said...!” – Not a Property Settlement
- How are Children heard in the Family Court?

“CLOSE-UP” EDITION

Child Support is calculated on the basis that the child attends a State School. Can a parent apply for the Child Support Agency to take into account private school fees? Find out more in “[Child Support and School Fees](#)”.

FREE “GUIDE TO FAMILY LAW”

Our “Guide to Family Law” Book is **FREE** and fully up-to-date with all the latest changes in Family Law, including, children’s arrangements, Child Support and property settlements for de facto couples. With over 80,000 copies distributed to date, our book is the only one of its kind in Queensland!

To get useful and important information about Family Law – order your FREE copy today! Ph. 3221 4300 or email law@mlynch.com.au.

Q&A

Q: What is the SSAT?

A: The SSAT is the Social Security Appeals Tribunal and its purpose is to hear appeals from people that disagree with decisions that the Child Support Agency have made.

The SSAT is not as formal as a Court. Appeals are heard by Tribunal members, the parties represent themselves and sometimes a Child Support Agency representative attends. Having considered a matter, the SSAT can confirm, vary or replace the original decision.

Any queries for ‘Q&A’, send them to law@mlynch.com.au and we’ll answer them!

“BUT YOU SAID...!” – NOT A PROPERTY SETTLEMENT

A Husband recently argued that a Wife’s verbal promise to not make a claim on his property should be given effect by the Court. Will a verbal agreement be enough for the Court to prevent the Wife from making such a claim?

The Facts:

- The Husband, aged 50 and Wife, aged 45 were together for 11 years.
- The Husband claimed that prior to their marriage, he and the Wife both agreed that the Wife would make no claim on his property. He argued that during the marriage the Wife refused to contribute to mortgage payments, repairs or renovations to the matrimonial home so that if she left him, she would not have a claim on the house and there would be nothing to split.
- The Husband also said that he trusted the Wife when she offered to see a solicitor and sign papers, as she said she ‘did not want anything’.
- The Wife confirmed that she told the Husband’s uncle that she had no interest in the Husband’s assets. She had also sent the Husband a text message 2 years earlier, stating that she did not intend to pursue a property settlement after her solicitor had written to the Husband about making a settlement.



- The Husband said that he would not have made renovations on the matrimonial home if the Wife was going to make a claim on the house. However, the Husband also left the work unfinished so that the value of the property did not improve in case he had to pay the Wife a greater amount in property settlement.
- The Husband did not respond to any letters sent by the Wife's solicitor. The time to file a property settlement lapsed, the Wife then applied to file a settlement out of time.

Court Found:

- The Wife's promise needed to be in the form of a written agreement for the Husband to legally enforce her statement that she would not make a claim on his property.
- The only way an oral agreement, such as the one the Husband asserted, could have been taken into account, was if:
 - it was proven that the couple implemented the agreement; or
 - that either the Wife or the Husband changed their financial position permanently to their detriment.
- The Husband, by only half completing the work on the house, contradicted any claim he may have had on acting to his detriment on the Wife's promises.

Court Order:

- The oral agreement cannot be taken into account.

- The time for the Wife to file her property Application, be extended.
- The Husband sell the matrimonial home and divide the proceeds of the sale equally.

HOW ARE CHILDREN HEARD IN THE FAMILY COURT?

While parents are able to provide evidence in Family Law proceedings (i.e. be questioned in Court or write an Affidavit), children cannot be present in a Court (i.e. a child is aged under 18 years). Depending on the age and maturity of a child, a determination of a child's care arrangements may depend heavily on the 'wishes' expressed by the child.

There are a couple of ways that the child's interests can be presented.

The recording of the child's 'wishes' can be done without the child even attending Court, through a Family Report. This Report is prepared by a 'Report writer' and can reflect the views of the child, which the Court can use as evidence.

An Independent Children's Lawyer is a lawyer that can be appointed by the Court to represent the child. Their role is to assist the Court in reaching a decision in the best interests of the child.

It is extremely unusual in Australia, for a Judge to ever conduct a private interview with the child, in the Judge's chambers.

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