



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:

- 7 Common Traps of Separation
- “Close-up” Edition
- Overseas Travel
- Family Law Update

7 COMMON TRAPS OF SEPARATION!

Separation can often be a complicated and confusing time. Most people don't know where to begin – here are some of the common mistakes that can be made...

1. **Going immediately to Mediation** – many people believe they have a legal requirement to go to mediation (often at a Family Relationship Centre). That is not the case. You must get legal advice first.
2. **Deciding not to speak to a counsellor.** There are usually great benefits in speaking with a counsellor.
3. **Thinking that domestic violence has to involve physical violence** – the definition of domestic violence is much broader than that and includes harassment and intimidation.
4. **Failing to document a property settlement agreement.**
5. **Not keeping a diary after separation** – it is of great assistance if you have a written record of events, including your financial arrangements and the children's arrangements and comments they have made.
6. **Not making a plan** – having a plan minimises stress, while maximising outcomes.
7. **Not seeking Specialist Family Law advice.**

To learn more listen to our Principal, Michael Lynch, discuss these traps on our FREE CD – “7 Common Traps of Separation” or listen to it online at www.mlfl.com.au. For your FREE CD, call us on 3221 4300.

“CLOSE-UP” EDITION

If a Consent Order is signed under duress, what impact does this have on its validity? Can the Order be set aside? Find out in this month's “Close-up” – [‘Setting Aside a Property Order for Duress’](#).

OVERSEAS TRAVEL

The first question that comes up when one of the parents proposes overseas travel with a child, is whether that country is a member of the ‘Hague Convention’ – see [“Close-up” article – July 2009](#).

The Court recently had to decide whether a Mother should be allowed to travel with her 2 year old son, each year, to her home country of Brazil. Brazil is a Hague Convention country and therefore would permit return of the child, if the Mother did not return – but was this enough for the Court to allow the child to travel with the Mother, against the Father's wishes?

The Facts:

- The Mother and Father met through internet dating and then lived together for a few months before the Mother had to return to Brazil under her tourist visa.
- The parents became engaged the day before the Mother returned to Brazil, after discovering she was pregnant.



- The Mother returned to Australia a few months later on an employment visa and the couple then separated when the son was 6 months old.
- The Mother wanted to take the son to Brazil once a year to allow him to develop a relationship with her family and friends. Both the Mother's parents and her twin brother lived there.
- The maternal Grandmother spent 15 months of the first 2 years of the son's life living with him however, she overstayed her visa and was then refused re-entry into Australia.
- The Father opposed the Mother taking the son overseas until the boy was old enough to remember the Father and could speak to him on the phone. He suggested that it not be allowed until the child was aged 6.
- The Mother said that if she was permitted to travel with the son, then with the help from her family, she could put \$20,000 in her solicitors' trust account, as security for the child's return.
- In response to this, the Father sought conditions that the Mother obtain permanent residency in Australia and lodge a \$200,000 security for the son's return, this was despite the fact that Brazil was a Hague Convention country.
- The Court appointed a Family Report expert who supported the Mother taking the son to visit her family, but not until the child was aged 4.

Court Order:

- Although Brazil is a Hague Convention country, the Father would still need to take action under the Convention and commence legal action himself. Any delay in the boy's return would have profound effects on the Father's relationship with his son.
- The Mother be permitted to take the son to Brazil on one occasion, for 2 weeks, before he turns 4 and thereafter annually for up to 4 weeks at a time.
- The Mother pay \$200,000 into her solicitors' Trust Account, to be held as security (for the Father) until she returns with the son. If the Mother secures unconditional registration in Australia with her qualifications and residency, the security payment be reduced to \$50,000.

FAMILY LAW UPDATE

Non-commercial surrogacy arrangements became legal for the first time in Queensland in February last year, for more information read '[Surrogacy in Queensland](#)'. The first baby to come under this legislation was recently born in Queensland. A Mother of two agreed to become a surrogate for a homosexual couple.

No written agreement was made between the birth Mother and parents before the child was born. Instead, a written agreement was made after the birth and an application for a Parentage Order was made under the *Surrogacy Act (Qld)*.

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Court Found:

- There would be significant difficulty and