

FAMILY Flyer



THIS ISSUE -

No. 152

- A Wealth of Information
- New Seminar Series!
- 'Close-up' Edition
- Q & A
- Is it a Valid Pre-Nuptial?

A WEALTH OF INFORMATION

Welcome to all new readers of the Family Flyer! Each fortnight the Flyer provides a wealth of information about Family and Relationship Law, from Family Law Specialists.

Below are some of our recent articles:

- Spouse Maintenance – Meeting a Partner's needs – Edition 138
- The Court's View on NAPLAN tests – Edition 144
- Overseas Travel – Edition 146
- Out of Time for Property Settlement – Edition 147
- Tips for Mediation – Edition 147

NEW SEMINAR SERIES!

The dates for our NEW public seminars series have just been listed.

The 2 topics, "Separation & Property" and "Separation & Children" will be held at different locations across Brisbane.

Each 1 hour seminar provides a wealth of information – valued at over \$500 – but for ONLY \$20, payable at the door! There is also a Special Offer – only for attendees. Upcoming dates are:

"Separation & Property"

- Grange: Wednesday, 27 July, 6pm at Crushers Leagues Club, 41 Agincourt Street;

- Brisbane City: Monday, 8 August, 1pm at Chifley at Lennons Hotel, 66 Queen Street Mall;
- Eight Mile Plains: Wednesday, 10 August, 6pm at Michael's Oriental Restaurant, 223 Padstow Road.

"Separation & Children"

- Redcliffe: Tuesday, 2 August, 6pm at Redcliffe Leagues Club, Cnr Klingner & Ashmole Road.
- Birkdale: Thursday, 4 August, 6pm at Redland Sporting Club, Anson Road.
- Woolloongabba: Tuesday, 9 August, 6pm at Diana Plaza Hotel, 12 Annerley Road.


Book Now! – ph. 3221 4300 or email law@mlynch.com.au.
For more information visit www.mlfl.com.au/seminars.

'CLOSE-UP' EDITION

When determining the percentage division in a property settlement, the Court will take into consideration the future needs of both parties. What happens when one spouse has full-time care of a special needs child? Read '[Property Settlement and Care for Special Needs Child](#)'.

Q & A

Q: My partner and I want to write up our own financial agreement – can we both go to the same lawyer?



A: No, one lawyer cannot represent or advise both parties, that would be a conflict of interest. If the document proposed is a 'Consent Order' typically the lawyer would prepare the document for one spouse and then send it to the other spouse, who would then have the choice as to whether they got legal advice or were legally represented. If a 'Financial Agreement' is proposed, both parties must be individually legally represented and specific documentation must be separately completed.

IS IT A VALID PRE-NUPTIAL?

Disputes that arise following the scramble to sign a pre-nuptial agreement are often referred to as the 'ink on the wedding dress' cases. One such case was recently considered by the Court and despite some formality issues, it had an interesting result.

The Facts:

- The couple were married for 5 years.
- Before the couple married, the Wife told the Husband she wanted to sign a pre-nuptial agreement to protect some of her assets for the security of her children from a previous relationship.
- The Husband did not want to sign a pre-nuptial agreement, but he told the Court that the Wife insisted that he sign the agreement.
- The Husband obtained legal advice and then signed the agreement believing that it had no effect as it did not technically comply with the legislation in force at the time. The Husband's position was that the agreement was signed after the couple married and should have been signed before the marriage.
- During the couple's first separation 3 years after the marriage, the Husband said he told the Wife that it was his view that the agreement had no legal effect. The

Husband said that the Wife did not reply to that statement.

- The Wife said she was unaware that it made a difference whether the agreement was signed before or after the wedding. When the Husband handed her the agreement, she said he made no mention that he believed it was unenforceable or invalid.
- The Wife submitted that it was still a binding agreement, however the Husband argued he only signed it to keep her happy.

Court Found:

- The section of the *Family Law Act* referred to in the agreement was correct when the agreement was made, however when the Husband signed it the section should have been changed and it was merely because of timing that the old section remained on the agreement.
- The agreement was signed by the Husband and he did not take any action to challenge the agreement or set it aside. Additionally, the Court questioned why the Husband and his solicitor, with the knowledge that the Wife had signed it, still continued to sign the agreement when believing that it would be invalid. Since both the Husband and his solicitor were aware of this, the Court concluded that the Husband must be bound by what he signed.

Court Order:

- That the agreement be varied to reflect the correct section of the *Family Law Act*.
- The agreement is valid and enforceable and binding on the Husband.

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