

FAMILY Flyer



THIS ISSUE -

No. 163

- Wealth of Information
- Q & A
- Splitting Superannuation in Property Settlements
- Stopping an Overprotective Parent
- Happy Christmas

WEALTH OF INFORMATION

The Family Flyer provides a wealth of information to more than 5,000 readers each fortnight. Recent popular articles have included:

- [Why Should I have a Pre-nuptial Agreement?](#) – Issue 150
- [Immunisations – A Court's Considerations](#) – Issue 151
- [What is a Trust?](#) – Issue 156
- [Relocation](#) – 1 Year Delay – Issue 157
- [Is a Clandestine Relationship Defacto?](#) – Issue 158

Q & A

Q: I'm about to get married for the second time. My first marriage breakdown was a bad experience and we spent months arguing over who should get which assets - I don't want this to happen again, what can I do?

A: The only way you can prevent this and protect the property you have is by entering a pre-nuptial agreement. This is a legally enforceable written agreement between you and your future partner that sets out how the property will be divided if your marriage breaks down. A Financial Agreement can be entered into before or during the marriage. Both you and your partner will need to see separate lawyers to get legal advice to make a pre-nuptial agreement.

SPLITTING SUPERANNUATION IN PROPERTY SETTLEMENTS

A Property Settlement involves a consideration of the complete pool of property between the partners, including Superannuation.

Not only is Superannuation included as 'property' but a member's fund is also able to be 'split' with the other spouse. This dramatically increases the options available in structuring a Property Settlement and is a common feature of most property divisions.

How Does Superannuation splitting work?

By Court Order or Agreement, the Trustee of the fund is directed as to what proportions to split the fund. The split amount is not realised as a cash payment, but is rolled over into an alternative account for the other spouse. Such a split can be in any percentage but can only be made if the member account being split has a balance value exceeding \$5,000.

STOPPING AN OVERPROTECTIVE PARENT

The safety of a child is a serious issue, but what if a parent unrealistically believes that the other parent's family are abusive and goes to extreme lengths to try and prove it?

An unusual case recently had to be decided before the Court, where both parents were seeking injunctions against the other to restrain behaviour which they believed was harmful to the child.

The Facts:

- The Mother and Father had one child, aged 5.
- The Father had filed a Court application 2 years earlier seeking to restrain the Mother from leaving the child unaccompanied with the Mother's Father. The Mother did not oppose the Application and the Order was made.
- The Mother at the recent hearing argued against the restraint on the Mother's Father.
- The Mother also filed a Court application seeking an Order to restrain the Father from taking the child to medical practitioners, the Police, or the Department of Child Safety, or from discussing with the child or staff at the school about issues relating to alleged bruises, bites, marks or injuries.
- The Court Ordered that the Mother and Father attend psychiatric assessment. The psychiatrist that examined both the Mother and Father noted that the Father was rigid in his views and he made the shared care arrangements difficult. The psychiatrist said that there was no basis on which the Father's belief that the Mother's family was abusing the child could be justified.
- The psychiatrist also said that the Father's beliefs of child abuse would have a detrimental effect on the child.
- The child's bruises were assessed to have been normal bruises from playing.

Court Found:

- The Father's behaviour was misguided and was emotionally harmful towards the child.

Court Order:

- The Father be restrained from attending with or presenting the child to any medical practitioner, taking the child to the Police or the Department of Child Safety Services and that he be restrained from talking about any alleged injuries to the child with staff at the child's school.
- The Father also be restrained from denigrating the Mother and her family in the presence of the child.

HAPPY CHRISTMAS

We will be closed over the Christmas period from 5.00pm on Thursday, 22nd December until 8.30am on Tuesday, 3rd January 2011.

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



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