

FAMILY Flyer



THIS ISSUE -

No. 170

- "Close-Up" Edition
- Q & A
- Dealing with a Large Inheritance

- Oops! – False Start
- What is a Location Order?
- Pay Nil Stamp Duty!

"CLOSE-UP" EDITION

International relocation cases are difficult, with the Court balancing a number of competing factors in determining the child's "best interests". In a recent case, the Mother told the Court she would relocate to Canada, regardless of the decision of the Court. Find out more about what factors the Court considers, and how they were applied in this case in – ["Relocation – Beware the Veiled Threat"](#).

Q & A

Q: My wife and I recently separated and I have moved out of our jointly owned home. Will this affect my entitlement when it comes to property settlement?

A: No, occupancy of the home will not impact on how a property settlement is determined. An assessment of each spouse's "contributions" is required in determining a property division. Possession of the home can sometimes improve your negotiating position.

DEALING WITH A LARGE INHERITANCE

Recently the Court had to determine a property settlement where the Wife had received a significant inheritance, and the Husband's contributions were – by contrast- very modest.

The Facts:

- Wife aged 42 years and Husband aged 36 years;

- Relationship of 9 years (married for 7);
- One child of the relationship, 8 years old at the time of trial;
- Prior to the relationship, the Wife received a \$4 million inheritance from her father's estate which vested 3 months after the parties were married.

The Husband worked outside of the home for the first 2 years of the relationship, earning a modest income, and thereafter (at the request of the Wife) stayed at home to assist with parenting, housekeeping and maintenance and was paid \$300/ week by one of the Wife's companies.

The Wife claimed that the Husband made few financial contributions, that her inheritance should be quarantined from the matrimonial asset pool (approx. \$4.5m) and that of the remaining "matrimonial assets" (\$670,000), the Husband should receive a 10% distribution.

The Court found that it was not appropriate in this case to quarantine the Wife's inheritance. The Court noted that this was a 9 year relationship with 1 child and that the Husband had made both financial and non-financial contributions.

The Wife then proposed that the Husband receive less than 1% of the matrimonial assets. The Court found that this proposal seriously undervalued the Husband's contributions.

The Court held that the Husband was entitled to 10% of the asset pool, taking account of his contributions and future needs.



OOPS! – FALSE START

With much fanfare, the *Family Law Act* was amended on the 1st of March 2009 to encompass all de facto financial disputes, for couples who separated after that date. In the ensuing 3 years, thousands of cases have been finalised under the legislation.

A problem arose a month ago when the Federal Attorney-General's office realised that the change in the law had not been commenced properly – it had not been proclaimed! This potentially jeopardised all the decisions that had been made under the new law.

This month the Federal Government fixed the error with retrospective legislation. Phew!

WHAT IS A LOCATION ORDER?

When a parent with a child is unable to be found, the Court may make a "location order" (also referred to as a 'Commonwealth Information Order') to find out where they are. A location order can require that:

1. A person inform the Court about a child's location; or
2. A Government Department (eg. Centrelink) provide the Court with information they have about the parent or child's location.

You can apply for a 'location order' if you are:

- a) A person who is part of a Court Order for the child (eg. Contact Order, or parental responsibility); or
- b) A grandparent of the child; or
- c) Any other person concerned with the care, welfare and development of the child.

A 'location order' is not the same as a 'recovery order', i.e. it does not direct the Federal Police to physically collect and

return the child.

A location order stays in force for 12 months or such longer period as the Court considers appropriate. Information provided to the Court under a 'location order' must not be disclosed by the Court, except as specified (eg. to a legal adviser, or to a process server engaged by that legal adviser).

In a recent case the Court made an Order that Centrelink provide all information it had about the location of the children, or their mother (who had care of the children at that time) to the father to enable a Court Application to be served on her. The case involved 5 contravention Applications by the father against the mother, alleging she had failed (without reasonable excuse) to comply with a Court Order.

Although having been served, the mother did not attend the hearing. The Court found that she had contravened the Order and ordered that she attend at a Court Registry to enter into a bond, failing which a warrant would issue for her arrest.

PAY NIL STAMP DUTY!

Separated couples (married or de facto) can avoid all stamp duty when transferring property between themselves (whether that is for a house, investment property, shares or motor vehicle) if their property settlement is properly documented.

Getting this paperwork right can represent a saving of tens of thousands of dollars!

The requirement is that the transfer of the property, in the property settlement, must be pursuant to an agreement documented as either a Consent Order or a Binding Financial Agreement.

It is important when considering a property settlement and also when documenting it that you obtain Specialist Family Law advice.

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