

# FAMILY Flyer



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## FREE BOOK – 'GUIDE TO FAMILY LAW'- ORDER NOW!

We have just released the updated – 2012 edition – of our popular book – **"A Guide to Family Law – Everyday Answers"**. Over the years, more than 100,000 copies have been printed and distributed.

The book includes information on children's arrangements, child support and property matters and is a MUST for anyone going through separation, or for organisations dealing with separated couples.

If you or your organisation would like one, or multiple copies, please contact us now. This FREE book is an invaluable resource, phone (07) 3221 4300 to order today!

## UNDERSTANDING INJUNCTIONS

In general terms, an injunction is a court order making a person either do, or refrain from doing, a particular act. More specifically, the Court can grant an injunction in relation to the property of a party. This is the most widely understood application of an injunction, i.e. to stop someone from disposing of property that the other spouse is claiming an interest in.

Common examples of this include, 'freezing' bank accounts and preventing the increase of a mortgage or line of credit or to stop a spouse transferring or disposing of an asset.

## RELOCATION AND FAMILY VIOLENCE

Unilateral relocation of a child by one parent is frowned upon by the Court and enables the parent 'left behind' to make an urgent application to the Court for the child's return.

At an Interim Hearing the Court can only read the parties written evidence therefore if allegations of serious family violence are raised the Court is unable to test the evidence. A recent case illustrated the difficulties in such cases.

### Facts:

- The mother and father lived together for 17 years and had 3 children, 12 year old twins and a 10 year old.
- The mother unilaterally moved from Sydney to Melbourne with the children.
- The father wanted the children to be returned to Sydney and to live with the mother in Sydney, and spend time with him each alternate weekend and half school holidays.
- The mother sought interim Orders that the children live with her in Melbourne and spend time with the father once per month at a contact centre in Melbourne.
- The parties agreed that the children had a relationship with the father. The Court considered both proposals would secure this relationship into the future (at least on an interim basis) although the mother's proposal was "minimalist".

- The mother alleged the children had been exposed to serious family violence. This allegation was supported by medical evidence, an affidavit of a witness indicating that Child Safety had been notified, as well as the father's criminal history.
- The father admitted some of the allegations, including a former heroin addiction.
- The mother argued her capacity to parent would be inhibited if she had to return to a place where she felt unsafe.

#### **Court Found:**

- The Court could not determine (at an interim stage) the impact of the violence allegations and it needed expert evidence.

#### **Court Order:**

- The least risk lay in leaving the children in Melbourne, and that was also the easiest situation to "un-do".
- Children remain in Melbourne on interim basis and Final Hearing be expedited.

## **CAN YOU CHANGE A "BAD BARGAIN"?**

A recent case in the Family Court has considered the circumstances in which a Binding Financial Agreement (BFA) for a final property settlement may be set aside.

#### **The BFA:**

- The husband and wife signed a BFA in 2007.
- The BFA had an agreed valuation price for the matrimonial home and the husband's business.
- The Agreement stated that the wife would receive a payment of \$350,000 on the sale of the home

and that this represented a 60% entitlement to the wife.

#### **Setting aside the BFA:**

- The matrimonial home sold for \$100,000 less than the agreed valuation.
- Since the Agreement, the husband's company had gone into liquidation and was worth nothing.
- The husband argued that these 2 factors meant that the BFA was "impracticable" and should be set aside. A 60/40 split had been intended and that could not be achieved.

#### **Court Found:**

- The parties had accounted for the potential variation in the sale price of the home, with the husband to cover any shortfall.
- The husband's inability to pay the amount did not mean the BFA should be set aside.
- Although the BFA set out an expected split of 60/40, both parties had accepted the risk of the home selling for more or less than the value in the BFA.

#### **Order:**

- The husband to pay the wife the outstanding balance of the \$350,000.

This case highlights the caution with which a BFA should be approached. The Court will strictly enforce a BFA, and a "bad bargain" will not necessarily allow one party to escape the terms of the agreement. The case also highlights the importance of careful drafting, had the parties drafted the wife's payment as a percentage of the sale price of the home rather than a set amount, the issue may have been avoided.

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**Principal: Michael Lynch\***  
 \*Queensland Law Society  
 Accredited Family Law Specialist



**CONTACT:**  
**Telephone:** 07 3221 4300  
**Address:** Level 6, 193 North Quay  
 Brisbane QLD 4000  
**Website:** [www.mlfl.com.au](http://www.mlfl.com.au)

