

FAMILY Flyer



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No. 175

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ALERT – FAMILY LAW CHANGES!

Starting on the 7 June 2012, significant changes to the parenting laws under the Family Law Act commenced. These amendments represent the most substantial changes to the law since parenting laws were re-written with the shared parenting amendments in 2006. The changes provide an expanded definition of "family violence", which will have a dramatic impact on how parenting arrangements are determined for many families. For a detailed description of these amendments and how they will apply, stay tuned for the next edition of the flyer.

Date claimer:

On the **24 and 25 July** we will be presenting a **public seminar** on these changes. Mark your diary now and keep an eye out for the upcoming flyer, for more details!

WEALTH OF INFORMATION

Our FREE fortnightly flyer provides a wealth of information on the constantly changing face of Family Law, as well as keeping you updated on our upcoming public seminars.

Below are some of our recent articles:

- Financial Protection – Part 1 & 2 (edition [173](#) & [174](#));
- Can Relocation be "Urgent"? (edition [169](#));
- Importance of Making Property Agreements Formal (edition [169](#));
- Relocation and Family Violence (edition [171](#));

- Considering "Changing" Wishes (edition [168](#)).

For any of these articles and more, visit our website at www.mfl.com.au.

CONSEQUENCES FOR TRUSTEE MISBEHAVIOUR

The Court recently had to consider what penalty to impose when a husband blatantly disregarded a Court order.

The wife had commenced property settlement proceedings. The husband's involvement in the proceedings was sporadic. Importantly however, the husband provided an undertaking early on that he would not deal with any assets in the self-managed superannuation fund in which he was the trustee, pending final settlement.

Shortly after this, the husband drew a cheque from the SMSF in the amount of \$116,000 to himself as the trustee of the SMSF.

The matter proceeded to a Final Hearing undefended (i.e. without the husband participating). The final Order provided that the wife was to receive 100% of the husband's interest in the SMSF, approximately \$143,000 – this included the amount of the cheque the husband had received.

The husband didn't provide the funds to the wife and she filed a contravention application.

It was then established that the husband had cashed the cheque shortly after the issuing of the final orders and since



then he had spent about \$100,000 of it, on gambling. The husband was ordered to transfer the balance of the funds in his bank account (\$17,000) to the wife. The husband's name and passport were listed with the Federal Police to stop him leaving the country.

At the time of the Contravention Hearing the husband had made partial repayment to the wife, but \$98,000 was still outstanding. The husband pleaded guilty to contravening the orders and was sentenced to 9 months jail.

LONG TERM SUPERVISION – WHEN IS IT APPROPRIATE?

Supervision of a parent's time with a child is ordered by the Court in cases where it is established that a parent poses a risk of harm to the child. Supervision is generally used as an interim (short term) measure until the parent in question has had the opportunity to take steps to address the issues of concern eg. to undergo drug testing, attend parenting courses or anger management counselling. Occasionally it will be necessary for the Court to order that time between a parent and child be supervised on a long term basis.

The Court recently dealt with a matter where the father was seeking alternate weekends and half school holidays with the child. The mother and maternal grandparents (with whom the child lived) sought orders for permanent supervision of time.

The Facts:

- The parties met in 2001 and at that time were both using illicit drugs, including heroin.
- The parties commenced a relationship but did not live together. The mother continued to reside with her parents.
- The child was born in 2003.
- In September 2003, the father was convicted of

drug charges and sentenced to 2 ½ years prison.

- In September 2006 the father stabbed the mother during an altercation and as a result, was charged with malicious wounding, to which he pleaded guilty.
- Court proceedings for the child arrangements were commenced in 2010 by the maternal grandparents after the mother was in a serious car accident and hospitalised for some time.
- The father failed a drug test for cannabis after telling the Court in 2010 that he had not used marijuana for 8 years.

Court Ordered:

- The father spend one weekend per school term, and limited school holiday time with the child, to be supervised by the maternal grandmother.
- The father not be entitled to make any further Court Application unless he provides 12 months of test results showing he has not used any drugs and attends dispute resolution with the other parties in an attempt to reach an agreement about proposed changes to the arrangement.

Q & A

.Q: My spouse has told me that she will not sign the Application for Divorce unless I agree to her parenting arrangements. Is there any other way I can file for divorce?

A: First of all, parenting arrangements and divorce are 2 separate applications. There is no need to sign an agreement for children's arrangements that you do not agree with. If your spouse refuses to sign the Divorce Application, you can file a sole Application for Divorce. You will need to serve this Application on your spouse, and attend a Court date to have the divorce granted.

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