

FAMILY Flyer



THIS ISSUE -

No. 178

- Seminars – Today and Tomorrow! Book Now!
- "Close-Up" Edition
- Beware "Second Hand" Advice

- Is it Reasonably Practicable?
- Intentional Damage to Property to Defeat Orders

SEMINARS - TODAY AND TOMORROW! BOOK NOW!

The recent Family Law Act amendments have widened the definition of family violence, and will impact how many parenting matters are decided. For only \$20, you can attend a one-hour information session discussing these changes, presented by Family Law Accredited Specialist, Michael Lynch. You will also receive an information pack, and have the opportunity to ask questions.

"Alert – Changes in Parenting Laws"

- [South Brisbane](#): 6:00pm – 7:00pm – Tuesday, 24 July, Diana Plaza Hotel, 12 Annerley Road, Woolloongabba.
- [Red Hill](#): 6:00pm – 7:00pm – Wednesday, 25 July, Broncos Leagues Club, 98 Fulcher Road, Red Hill.

To register, call (07) 3221 4300 or email law@mlynch.com.au. Book now, seating is limited!

Date Claimer:

Keep an eye out for the details of our next seminar series, starting on 21 August 2012. This will be for our popular seminars "**Separation and Property**" and "**Separation and Children**". For full details, see the next edition of the flyer, or call us for more information.

"CLOSE-UP" EDITION

A recent Family Law case has had to consider the professional obligations of a school counsellor where a child made disclosures which were relevant to on-going parenting arrangements. See our close-up article – "[A Warning for School Counsellors](#)".

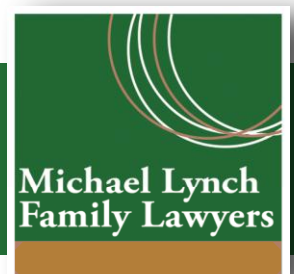
BEWARE "SECOND HAND" ADVICE

Separation is a difficult time, and it is natural that someone going through a divorce will talk with friends and family, particularly those that have had similar experiences. But – beware of relying on their experience and following their advice.

The Family Law Act provides the basis for determining most family law issues, including property settlement and children's matters. The Act has undergone extensive changes over the last decade, almost annually. It is therefore likely that someone else's experience occurred when the law was completely different.

There is one universal rule in Family Law – "everyone is different". If you are separated, or about to separate, we recommend you get Family Law advice – sooner rather than later. We offer a 1 hour – no obligation – fixed cost- initial consultation for \$275 (incl. GST).

For more information, or to make an appointment – call us on (07) 3221 4300 or email law@mlynch.com.au.



IS IT REASONABLY PRACTICABLE?

When the Court makes an Order for a child to spend equal time with both parents, it must also consider whether such an order is 'reasonably practicable'. When deciding whether children's arrangements for 'equal time' are 'reasonably practicable', the Court must consider where the parents live, the parent's ability to communicate and resolve difficulties, and the impact of the arrangements on the child.

In a recent case, Orders providing for 'equal time' were handed down by the Court. The Orders were appealed by the Mother on the basis that the Judge had not considered whether such Orders were "reasonably practicable".

The Facts:

- The Father and Mother separated before the child was born. At the time of the hearing, the child was just over 2 years of age.
- The Mother and Father lived on opposite sides of Sydney – the Mother on the north shore and the Father in the western suburbs. The driving time between the 2 homes was approximately 2 hours.
- The Mother appealed the Orders on the basis that they would not be practicable when the child started school, given the distances between the houses.

Court found:

- Although the Judge had considered whether 'equal time' was in the child's best interest, he had failed to give consideration to the practicality of this arrangement when the child started school.
- The appeal was successful.

INTENTIONAL DAMAGE TO PROPERTY TO DEFEAT ORDERS

The Court has the power to set aside or vary a Court Order for property division where it is no longer 'reasonably practicable' for the Order to be carried out, or where one of the spouses has defaulted in carrying out their obligations under the Order.

Recently, the Court considered a case where:

- A Court Order had been made for the Wife to pay to the Husband the sum of \$250,000 (plus interest accruing) and, in default of payment, that a residential property be sold and the Husband be paid his entitlement from the proceeds of sale;
- The Wife defaulted in paying the Husband and the residential property which was to be sold was damaged by fire resulting in a significant decrease in value so there was insufficient equity in the property to pay the Husband his entitlement;
- The Wife had been convicted of arson in relation to the fire at the residential property and was awaiting sentence.

The Court found that, in light of the above circumstances, it was reasonably impracticable for the original order to be carried out and it would be just and equitable to vary the Order. The Order was varied to allow for the sale of the two other properties, if necessary, to allow the Husband to be paid his entitlement pursuant to the original Order.

Copyright 2011

This document contains general comments and should not be relied upon as specific legal advice. Readers should contact this Office for advice on any topic in this document. Changes to the law occur regularly, no responsibility for any loss or damage caused to anyone acting in reliance on this document shall be accepted by this Office. No part of this document may be reproduced without our written approval.

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

