

# FAMILY Flyer



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No. 177

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## NEW PUBLIC SEMINAR – CHANGES IN PARENTING LAWS

Our new seminar will outline the recent parenting law changes to the Family Law Act. The new definition of "family violence" and other terms, will affect a lot of people.

For only \$20, you will receive a 1 hour information session, and have the opportunity to ask questions. Michael Lynch, Accredited Family Law Specialist, presents the seminar in an easy- to-understand way, ensuring you get the most out of the session. Don't miss out!

### "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](mailto:law@mlynch.com.au). Book now, seating is limited!

## NEW RULE – CONSENT ORDERS

From 11 July 2012, an amendment will be made to the Federal Magistrates Court Rules requiring that parties who are lodging a Consent Order must inform the Court whether there have been allegations of abuse, family violence, neglect, mental ill health, drug or alcohol abuse, serious parental incapacity or any other allegation involving risk to the child. Where there is such an allegation, parties must

explain how the Consent Orders attempt to deal with the issues.

As part of the new requirement, legal representatives applying for Consent Orders in parenting matters must jointly sign a form addressing any such issues.

## WITHHOLDING A CHILD

Occasionally circumstances arise which cause one parent to withhold a child and not return them to the other parent, in accordance with a Court Order. This usually results in an application for a "recovery order" being made. In these cases, the Court has to carefully consider any allegations that may be made by the parties against the need to preserve the child's relationship with both parents.

The Court recently considered an application for a "recovery order" by the mother in circumstances where the father of a 9 year old child had withheld him following school holiday time. The father alleged that the mother's parenting of the child was marked by neglect and that she had exposed the child to abuse by her current partner.

Evidence showed that the Police had made an application for a domestic violence order against the mother's partner which included an allegation that he had pushed the child and caused him to fall and suffer bruising. It was also ascertained that the mother had a temporary DVO against her previous partner and that the children were protected persons under that order.

The Court found that while neglect and family violence



figured prominently in the evidence before the Court, no allegation of violence were made against the mother. The Court noted that the child was in need of stability and should be in a position to continue his relationship with his older siblings, who also lived with the mother.

The Court ordered that the child be returned to the mother and that the mother not allow her partner to be alone with the child at any time.

## CAN YOU SET ASIDE A FINANCIAL AGREEMENT IF CIRCUMSTANCES CHANGE?

When parties enter into a financial agreement to finalise their property settlement their financial ties are severed. The Court however, does have the power to set aside a financial agreement in some specific circumstances, such as when there has been a material change in the care arrangements for a child and a party will suffer hardship if the agreement is not set aside. A recent case has considered the question of "hardship":

- After a 20 year relationship the parties separated and entered into a financial agreement for property division.
- At the time of entering into the agreement the parties' two daughters lived with the wife. The wife subsequently re-partnered with an English man following the financial agreement being made and relocated to the UK. The oldest daughter moved with the wife to the UK, whilst the youngest daughter came to live with the husband.
- The husband filed an application seeking that the financial agreement be set aside on the grounds of hardship. The husband contended that as a consequence of the youngest child now living with him a change had occurred resulting in him having to decrease his working hours, therefore his income had decreased and his expenses had increased.
- The Court accepted that the husband had more

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responsibility in caring for the child, however the Court was not satisfied that with the change of circumstances that the husband's net position was much worse.

- The Court found that the Husband was not suffering hardship. The application to set aside the financial agreement was dismissed.

## CONSIDERING 'WASTAGE'

In some cases, due to a spouse's conduct, it is arguable that they have wasted matrimonial funds in some way, eg. by way of alcoholism, drug use or gambling. Similarly, it can be argued that as a result of such behaviour by one spouse that it has made the contributions of the other spouse more onerous.

How does the Court deal with these types of matters?

The Court recently considered such a case. The basic facts were:

- Long marriage (22 years);
- 4 adult children;
- Husband was primary income earner;
- Wife raised children and worked part-time.

The husband admitted to regular and substantial consumption of alcohol and use of marijuana, to the detriment of his health. The wife alleged that his drug and alcohol use made his moods during the relationship extremely volatile and that he subjected both the wife and children to considerable abuse.

The Wife further argued that the Husband had dissipated joint assets post separation as a result of his addictions and gambling. She sought to "add back" the amount of \$94,000 which were monies received by the husband following the sale of a property.

The Court found in favour of the Wife, making a 20% adjustment in her favour. Further, the Court allowed an add back of \$74,500.

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