

# FAMILY Flyer

No. 180

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## PUBLIC SEMINAR SERIES – STARTS TODAY!

Our popular public seminar series starts today! Get information about separation, property settlement and the recent changes in children's matters. These seminars are an invaluable resource for anyone going through separation.

Only \$20, for over \$500 value, you will receive a 1 hour information session, presented by Accredited Family Law Specialist Michael Lynch, and other useful publications.

### "Separation and Children"

- [Sunnybank](#): 6:00pm – 7:00pm – Tuesday, 21 August, Sunnybank Community and Sports Club, Cnr Granadilla & McCullough Streets, Sunnybank.
- [Chermside](#): 6:00pm – 7:00pm – Tuesday, 28 August, Kedron Wavell Services Club, 375 Hamilton Road, Chermside South.

### "Separation and Property"

- [Oxley](#): 6:00pm – 7:00pm – Wednesday, 22 August, Oxley Golf Club, 290 Boundary Road, Oxley.
- [Brisbane City](#): 1:00pm – 2:00pm – Monday, 27 August, The Sebel Suites, Cnr Albert & Charlotte Streets, Brisbane.
- [Wynnum](#): 6:00pm – 7:00pm – Wednesday, 29 August, Wynnum Manly Leagues Club, 92 Wondall Road, Manly West.

To register, call (07) 3221 4300 or email [law@mlynch.com.au](mailto:law@mlynch.com.au). **BOOK NOW!**

## "CLOSE-UP" EDITION

When one parent wishes to change a child's surname, and the other parent disagrees, it can become a matter for the Court to determine. The Court will consider whether the name change is in the child's best interests. For a detailed discussion of this, see our article – "[Changing a Child's Surname](#)".

## Q & A – CHILD SUPPORT – PART 2

**Q:** What happens if a parent doesn't lodge a tax return or tell CSA about their taxable income?

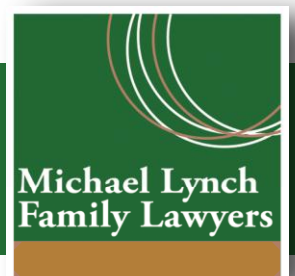
**A:** The CSA will use a provisional income until they have the most up-to-date details from when the tax return is lodged. In the event you believe that the payer has some undeclared income or the provisional income being used by the CSA is less than the payer's actual income, we recommend you obtain legal advice regarding lodging a Change of Assessment Application.

## WHAT IS FURNITURE WORTH?

A common question raised when determining a property settlement is, "What is the furniture and jewellery worth?".

This is understandable as one of the first steps when considering a property settlement is determining the value of all the property the spouses own together and separately. The value of property, such as furniture and contents, is included in the "property pool".

It is important to note that the value is **not** based on an insurance or replacement value but rather a second-hand



dealer assessment.

Furniture and white goods assessed on a "second-hand dealer" basis is a lot less than replacement value, usually 10 – 20% of the replacement value.

Jewellery is valued on the individual saleability of each item given current market conditions. Generally, these prices are roughly 20-30% of the insurance value.

The Court usually finds most homes have contents valued on a second-hand dealer basis from between \$7,000 to \$12,000. This is why it is often advisable to stay in the house and retain the contents as the valuation is usually dramatically less than replacement.

## OVERBEARING BEHAVIOUR

The Court has the power to set aside a Financial Agreement in circumstances where a party to the agreement has engaged in conduct that was, in all the circumstances, unconscionable.

Recently, the Court considered a case where the parties had entered into a Financial Agreement during the marriage, and approximately 8 months prior to separation.

### The Facts:

- The parties were married in 1994 and had 3 children aged 14, 12 and 9.
- In 2010, the husband became aware of the wife having an extra-marital affair.
- This led to the parties completing a document entitled: "Code of Conduct Marriage Contract". This document essentially provided for the husband to agree to the marriage continuing despite the wife's continuing extra-marital affair and that she would receive a particular percentage of the marital property upon separation.

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- The husband then discovered that the "Code of Conduct" document was not legally enforceable and the parties sought legal advice in relation to preparing a Financial Agreement.
- In September 2010 the parties entered into a Financial Agreement. The Financial Agreement provided that the wife would receive 45% of the matrimonial home and the parties would otherwise retain their own superannuation.
- The parties separated in April 2011.

### Court Found:

In considering whether the husband's conduct was unconscionable, the Court concluded:

- The husband engaged in a process of constant badgering and psychological pressure from the time it became apparent that the "Code of Conduct" document was not legally enforceable.
- That pressure was so great that it led the wife to eventually give in and sign the Financial Agreement in September, some months after she had legal advice that she should not sign it.
- The husband's conduct towards the wife was unrelenting and in all circumstances improper.

### Court Order:

- The husband's conduct was unconscionable and the Financial Agreement should be set aside.

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