

FAMILY Flyer



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NEW SEMINAR SERIES – 2 HOUR SPECIAL!

Our latest seminar series covers the essentials of Family Law, including children's arrangements, property settlement and the latest family violence and domestic violence amendments.

For ONLY \$30, you will receive a 2 hour information session, and have the opportunity to ask questions. Family Law Specialist, Michael Lynch presents this seminar in an easy to understand way, ensuring you get the most out of the session.

"Family Law Explained"

- [Sunnybank](#): 6:00pm – 8:00pm – Wednesday, 24 October, Sunnybank Community and Sports Club, 470 McCullough St, Sunnybank .
- [Redland Bay](#): 6:00pm – 8:00pm – Tuesday, 30 October, Redland Bay Golf Club, North Street, Redland Bay.

To register, call (07) 3221 4300 or email law@mlynch.com.au. **BOOK NOW!** Seating is limited!

FREE 'GUIDE' BOOK! ORDER NOW!

Have you ordered our new free book – "**A Guide to Family Law – Everyday Answers**"? Fully up-to-date this book is an invaluable resource for people going through separation, and anyone dealing with separated couples. Call us on (07) 3221 4300 to order now!

CAN I RETURN TO THE HOME?

It is not uncommon for one party to move out of the home in the heat of a separation. While either party can return to the family home by consent at a future time, it is important to be aware that moving back into the home at a later stage may not be as easy as you think.

The Court has the power to make a temporary order giving one spouse and the children sole right to use and occupy the family home until a final property settlement has been made. In some cases the order may allow the spouse who has previously left the home re-entry and sole use.

Be aware that registered ownership of the house is not the issue, nor is the bona fide ownership of particular items of furniture; rather the issue for the Court is generally about financial practicalities and "keeping the peace" until final property settlement.

An order for "sole use and occupation" of the home is not an Order distributing the parties' property, but merely a temporary order until such time as a property settlement is finalised. Often these cases will involve allegations of 'domestic violence'. On 17 September, the domestic violence legislation was amended to include a wider definition of "domestic violence". It is therefore important that you urgently get family law advice, ideally before leaving the home.

NO ORDER FOR CHILD AGED 16 ½

When determining parenting arrangements, the Court may consider the wishes of the child. The weighting given to a child's wishes will be determining by considering the maturity and understanding of the child. As a child gets older, therefore, it is more likely that the Court will issue Orders in the same terms as the wishes expressed by the child.

In a recent Family Court case, a 16 ½ year old child expressed a strong and consistent wish to the Family Report writer not to spend time with his Mother.

The Facts:

- The child was living with the Father, and was estranged from his Mother.
- The Mother claimed that the child was at risk of child abuse while in the Father's care. The Mother claimed that the Father exposed the child to pornography, and was involved with a family who ran a brothel.
- The Mother sought that the child be placed into a youth housing facility where he would receive daily counselling, following which he would live solely with her.

Court Found:

- The Mother's claims of abuse were unfounded.
- The family report writer stated that the child expressed a "firm view" that he wanted to continue to live with his Father.
- The child was mature and his "wishes" should be given considerable weight.

Court Held:

- The child's views to live with the Father were consistent and strong.

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- It was in the child's "best interests" to remain living with the Father.
- Orders were made for the child to see his Mother "in accordance with his wishes" (i.e. no specific terms were made.)

PART 2: HOW TO GET A FAMILY REPORT

A private family report can be arranged before parties are in Court, if it is considered appropriate and the parties agree. In these circumstances it is usual that one party proposes a panel of 3 expert report writers, from which the other party is able to nominate one report writer to conduct the report.

However, more often than not a family report is ordered by the Court in the initial stages of parenting proceedings. Parties can either agree on a private report writer or ask that the Court appoint a Family Consultant (employed by the Court) to carry out the family report.

Family Consultants are qualified social workers or psychologists with expertise in working with children and families. If the Court orders a report, it will assess whether the parties need to pay for, or contribute to, the cost of its preparation. In making that decision, the Court will consider the facts of the case and the parent's financial circumstances.

In the even a Family Consultant is appointed to complete a report, the parent's (or their lawyers) will be contacted by the Family Consultant advising the parties of their appointment times. The parties and children must attend all appointments.

In the event the parties decide to appoint a private report writer, it is usual that a joint letter be prepared by the parents solicitor's engaging the report writer and outlining the background of the matter, the terms of their engagement, the issues to be addressed in the report and enclosing any relevant documentation for their attention.

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