

FAMILY Flyer



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"CLOSE-UP" EDITION

The popularity of social media is fast becoming apparent in Family Law cases. Photos, comments and status updates are being brought up as evidence in family law matters. Given the prevalence of social media today, it is important that you are aware of this and the possible effect on your family law matter. For a detailed discussion, read our article "[Stop It! Family Law and Social Media.](#)"

NEW NAME FOR FEDERAL MAGISTRATES COURT

The name of the Federal Magistrates Court has been changed to the Federal Circuit Court of Australia. As part of the renaming of the Court, Federal Magistrates will now be referred to as Judges.

DOMESTIC VIOLENCE CHANGES – PART 3

Over the past 2 flyers, we have looked at a few of the major changes brought in by the domestic violence amendments in September 2012 (for a full summary, see our article "[Alert – New Domestic Violence Laws – Queensland](#)"). In this final instalment, we will look at the provisions in the new Act that address protection of witnesses in domestic violence proceedings.

When the Court is faced with vulnerable witnesses, there is a positive obligation on the Court to consider putting "special arrangements" in place. Such "arrangements" may include:

- Evidence being given by videolink;
- One-way glass so the witness cannot see the respondent;
- The person giving evidence being allowed to have a support person in Court.

The Act also makes provision for witnesses with physical or mental disabilities, to ensure that they can give evidence in a way that minimises distress.

SEVERING A JOINT TENANCY

There are two ways that couples can own real estate, either as "joint tenants" or "tenants in common". When couples separate they may need to consider what arrangements are in place.

Owning real estate as "joint tenants" means that if one of the parties dies then their half interest in the property automatically passes to the other owner regardless of the provisions in their Will.

If someone holds an interest as "tenants in common" and they die, then the future ownership of their entitlement will be determined in accordance with their Will.

Most couples hold property as "joint tenants", therefore if separation occurs people may wish to look at severing the joint tenancy. This is a straight-forward process that then creates a "tenants in common" ownership. To do this, the consent of the other party is not necessary.

Severing the joint tenancy does not attract stamp duty. It is

a process that goes through the Titles Office.

However, we note that severing a joint tenancy is not for everyone and may create hostilities between parties that inflame other matters and lead to delays in finalising or settling. It is therefore important to obtain Specialist Family Law advice in considering your circumstances and whether it is appropriate and to help you establish a plan.

We offer a fixed fee, no obligation initial consultation. Please contact us on (07) 3221 4300 to arrange an appointment.

GETTING A CONTRAVENTION APPLICATION RIGHT

Parenting Court Orders impose obligations on the parents to comply with (and facilitate) the Orders that are made. When one parent fails to comply with an Order, the other parent may bring a Contravention Application against them.

The Court deals with Contravention Applications in a strict manner, due to the penalties that can be imposed. As a result, it is important to get your Contravention Application “technically” right from the start.

Example:

In a recent case, the Court dealt with a Contravention Application by the Father which alleged that the Mother had breached three parenting orders by “*obstructing the organising of time between the father and the child...*”. The Father’s application did not contain any specific allegations relating to any of the Orders that he alleged had been breached. The Court found it was “vague” and in “generalised terms”.

Ultimately, the Court found that the Father had not established a contravention by the Mother, on any of the three counts.

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Requirements:

A person is found to have contravened an Order where they have either:

- a) Intentionally failed to comply with the Order; or
- b) Made no reasonable attempt to comply with the Order.

When drafting a contravention application, it is important to specify whether you say the other party either *intentionally failed to comply* or *made no reasonable attempt to comply*.

An applicant in a contravention matter must show the Court that:

- a) An Order exists (whether an interim or a final order); and
- b) The respondent has contravened the Order.

You must state, clearly and concisely, the facts you rely upon to demonstrate the contravention. If you allege that more than one order has been contravened, or that an Order has been contravened on more than one occasion, deal with each alleged “breach” separately. Making one statement to cover all alleged contraventions, as happened in this matter, is not advisable.

MERRY CHRISTMAS!

Our office will be closed from 5:00pm on Friday 21 December 2012 and will re-open at 8:30am on Wednesday 2 January 2013.

Merry Christmas and best wishes for the New Year from all of us at Michael Lynch Family Lawyers.



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