

FAMILY Flyer



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MAKE SURE YOU CONSIDER SPLITTING SUPER

Superannuation is property and the Family Law Act allows for a superannuation fund to be split.

Splitting is not mandatory and it does not convert it into a cash asset – it is still subject to superannuation laws (for example, it is usually retained until retirement ages are reached).

Besides a Court ordering a split, parties can agree to do it, but an agreement must be correctly documented, either by a Consent Order or a Financial Agreement.

For guidance on your situation, call us for a fixed cost initial consultation on 3221 4300.

DATE CLAIMER!

The end of the year is fast approaching and so is our LAST public seminar series for the year.

For this final series, we will be running our most popular seminar. Note the upcoming dates;

- Thursday, 24 October – North Lakes (evening)
- Wednesday, 30 October – Springfield (evening)
- Tuesday, 12 November – Brisbane City (lunch)

More information coming soon!

PROPERTY SETTLEMENTS: WARNING – TIME LIMITS!

Property settlements can be made by married couples and de facto couples. However, it must be remembered there are strict time limits for when any Court Application must be made.

Married: couples must ensure a property settlement application is made within 12 months of their divorce being finalised.

De facto: couples must file a court application within 2 years of separation.

If a property division is not completed within the time required, permission will need to be obtained from the Court to apply for an order.

FAQ

Q: My wife wants a divorce. I don't. Can I stop her getting one?

A: There is only one ground for divorce in Australia where there are no children - that you have been separated for 12 months. If there are children, the Court would also have to be satisfied that proper arrangements have been made for them. In most cases it is difficult preventing the Court granting a divorce.

DIVORCE AND WILLS

Your Will is cancelled if you marry. The only exception to this is if you make your Will in contemplation of the marriage.

Divorce does not automatically cancel a Will. If you want to change your Will when you divorce, you have to make a new Will. Nevertheless, divorce revokes any gift that is made to a former spouse and the appointment of the spouse as executor, trustee or guardian.

It is always best to make a new Will after a divorce to avoid any doubt about your real intentions.

ASSESSING INCOME EARNING CAPACITY FOR CHILD SUPPORT

The Court was recently requested by a Mother to increase the Fathers 'assessable' income for child support, thereby increasing the CSA payment due.

The basis for the request was the belief that the Father's annual income had reduced and that his 'income earning capacity' was in reality a lot higher.

The child lived with the Mother and spent limited time with the Father. The Father had been paying child support assessed on his decreasing taxable income. The Father's annual personal taxable income had decreased from \$149,322 in 2010, to \$92,088 in 2011, and to \$68,391 in 2012. The Father was a partner in a firm from which he was paid a salary but also received distributions from a Trust.

The Court found that the Father had available to him considerably more income out of which to meet child support obligations than what was included in his taxable income. The Court increased the Father's annual income from its present sum of \$68,391 to \$180,000 per year for the

next 3 financial years after which time it was to be reviewed.

SEEKING THE RETURN OF AN ABDUCTED CHILD

What happens when a parent abducts a child to a 'non-Hague convention' country, but then returns to Australia on their own? The Court recently considered a mothers urgent application to restrain a Father from leaving Australia, after he had earlier abducted their 10 year old daughter.

The Mother was an Australian citizen and the Father was a permanent resident of Australia. They had separated in December 2011. Until April 2012 the child lived with the mother and spent time with the Father. In May 2012 the Father picked the child up from school, took her to the airport and removed her to a non-Hague Convention country where she remained.

In July 2012 the Court made an Order for recovery of the child. In May 2013 the Mother cancelled and withdrew the recover Order on the basis the child was unlikely to return to Australia and there was no point proceeding further.

More recently however the Mother discovered that the Father had returned to Australia (alone), so she immediately sought the restraining order. She was successful and he was restrained from leaving Australia and he was required to return the child to Australia. The Mother was able to obtain the Order without having to put the Father on notice of the proceedings, on the basis that he would be a "*flight risk*" if he discovered that she was making an application.

The Court accepted that the child had been removed illegally and that if the restraining order was not granted the Father would not return the child and the Mother would not have a relationship with the child.

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