

# FAMILY Flyer



THIS ISSUE -

No. 208

- Final Seminars – BOOK NOW!
- Close-Up Edition
- Considering Asset Protection in Family Law

- What is “Substantial and Significant Time”?
- How to Finalise A Property Settlement
- Q & A

## FINAL SEMINARS – BOOK NOW!

Don't miss our last public seminar series for the year.

“7 Secrets to Surviving Property Settlement” is our most popular seminar and a must for anyone that is going through a separation and wants to know the best way to navigate a property settlement and reduce financial pressure.

Although the presentation is valued at over \$500, the attendance cost is ONLY \$20, payable at the door.

Accredited Family Law Specialist Michael Lynch will present in an easy-to-understand style and answer questions, such as:

- Am I separated if we are still in the one home?
- Will I be prejudiced if I move out of home?
- How is property divided?
- What are the consequences for my superannuation?
- How do I document a property settlement?
- And much more...

### “7 Secrets to Property Settlement”

- [North Lakes](#): 6:00pm – 7:00pm – Thursday, 24 October, North Lakes Library, 5 Discovery Drive, North Lakes.
- [Springfield](#): 6:00pm – 7:00pm – Wednesday, 30 October, Springlake Hotel, 1/1 Springfield Lakes Boulevard, Springfield Lakes.

- [Brisbane City](#): 1:00pm – 2:00pm – Tuesday, 12 November, The Sebel Suites, Cnr Charlotte & Albert St, Brisbane City.

To register, call (07) 3221 4300 or email [law@mlynch.com.au](mailto:law@mlynch.com.au). **Book now**, seating is limited!

## CLOSE-UP EDITION

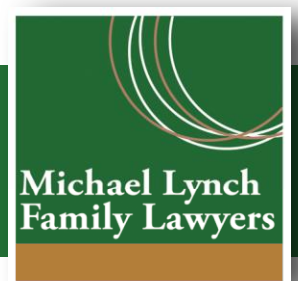
With the recent Queensland Child Protection Commission of Inquiry releasing its report, the topic of child protection is under the spotlight.

Each State of Australia has its own laws that deal with child abuse. So what's the situation in Queensland? For an 'easy to understand' insight of what occurs with child abuse notifications in Queensland read our Close-up article “[Child Abuse Intervention](#)”.

## CONSIDERING ASSET PROTECTION IN FAMILY LAW

There have been a number of cases decided by the Family Court in relation to Family Discretionary Trusts in recent years where the assets of a Family Trust have been considered ‘property’ of the parties to the marriage rather than just a “financial resource” (i.e. percentage consideration) of one of the parties.

In cases where the evidence shows that a party to the marriage has control or de facto control of a Discretionary Trust, then the relevant interest in the Trust will be ‘property’ under the Family Law Act and able to be included in the property division.





Cases show that where the Husband (for example) is both the Appointor and a Director of the corporate Trustee of the Family Trust and falls within the class of beneficiaries who can benefit from the Trust, the assets of the Trust will be considered property of the parties to the marriage.

If you are involved in a complex property settlement you must get Specialist Family Law advice. Call us on (07) 3221 4300 for a 'fixed cost' initial appointment.

## WHAT IS "SUBSTANTIAL AND SIGNIFICANT TIME"?

The Family Law Act requires that in determining the most appropriate child contact arrangements that there initially be a consideration of "equal time" and if that is not appropriate, then there be a consideration of "substantial and significant time". So, what is that?

"Substantial and significant time" is defined as "time in addition to weekends and holidays and which allows involvement in the child's routine and in occasions and events that are significant to the child and the parents".

## HOW TO FINALISE A PROPERTY SETTLEMENT

Surviving a separation is hard enough without the added stress of finally reaching an agreement on property settlement but failing to document it properly.

We were recently involved in a case where the Husband and Wife had separated and had reached an agreement for property division of a multi-million dollar property pool. However this agreement had only been documented on a piece of paper between them. (Not enough!). Seven years later the Wife approached the Husband looking for a property settlement! There had been no divorce to finalise the time limit for a claim, but more importantly, as the agreement had not been documented

correctly the issue of property settlement remained open. What followed was a lengthy Court case, a further payment by the Husband to the Wife and a lot of unnecessary stress.

It is crucial that an agreement for property division be documented and documented correctly. This means, either by (a) a Consent Order (a Court form) or, (b) a Financial Agreement. Not only do these documents provide finality, but they also have the added benefit of any property transfers made pursuant to the documented agreement being exempt from stamp duty (which can be a significant amount) and receiving CGT rollover relief.

Obtaining independent legal advice from a Family Law Solicitor should always be the first step before you proceed to document a property settlement agreement.

Resolving a property settlement is a major event in anyone's life and documenting it should receive the careful treatment it deserves by being prepared by a Family Law Solicitor. Many separated couples reach an agreement on how to divide property, when this occurs one of the parties will visit us (a solicitor can only represent one spouse), and seek our assistance in correctly documenting the agreement.

For a fixed cost – no obligation – initial consultation call us on Ph. 3221 4300 or email [law@mlynch.com.au](mailto:law@mlynch.com.au).

## Q & A

**Q:** I divorced my husband two years ago. My two children aged 9 and 7 live with me. I met a new man and I want to get married. He is from the USA. I want to move there because it will be better for my children. Can I just leave?

**A:** No, you cannot just leave. You will need your husband's permission. If you do not receive it, it will be necessary for you to ask the Court to make an order allowing you to leave. If you leave without your Husband's permission, he could seek an Order that the children be brought back.

Copyright 2011

This document contains general comments and should not be relied upon as specific legal advice. Readers should contact this Office for advice on any topic in this document. Changes to the law occur regularly, no responsibility for any loss or damage caused to anyone acting in reliance on this document shall be accepted by this Office. No part of this document may be reproduced without our written approval.

**Principal: Michael Lynch\***  
\*Queensland Law Society  
Accredited Family Law Specialist



**CONTACT:**  
**Telephone:** 07 3221 4300  
**Address:** Level 6, 193 North Quay  
Brisbane QLD 4000  
**Website:** [www.mlfl.com.au](http://www.mlfl.com.au)

