

# FAMILY Flyer



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No. 215

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## PUBLIC SEMINARS START IN 2 WEEKS!

Do you want to know more about separation and property settlements but without all the unnecessary legal jargon? Our first Seminar Series for the year will provide you with the opportunity to get up-to-date information on Family Law in an easy-to-follow 1 hour seminar.

'**Separation and property**' will be presented by Principal and Accredited Family Law Specialist, Michael Lynch, at three separate locations. For only \$20 you will receive information valued at over \$500, as well as the opportunity to ask questions and there will be a **special offer** for all attendees.

### "Separation and Property"

- [Sunnybank](#): 6pm – Wed, 26 February – Sunnybank Community & Sports Club, 470 McCullough St, Sunnybank
- [Brisbane City](#): 1pm – Tues, 4 March – The Sebel Suites, Cnr Charlotte & Albert St, Brisbane
- [New Farm](#): 6pm – Thurs, 6 March – New Farm Library, 135 Sydney St, New Farm

Book your seat now! Phone (07) 3221 4300 or email [law@mlynch.com.au](mailto:law@mlynch.com.au).

## THE COURT SIGNS

Often the Court may make an Order in a property settlement that will require one spouse to transfer property to the other. What happens if one party refuses to sign the property 'transfer'?

Section 106A of the *Family Law Act* provides a Registrar of the Court with the power to sign the transfer documents in place of the delaying spouse, so a property transfer can proceed.

## FATHER OBJECTS TO SKYPE

Skype has increasingly become a tool for parents to see their children when distance prohibits them having regular 'in person' time. In a recent relocation case, the father objected to the use of Skype where the mother was proposing to relocate interstate with the child.

- The parties lived in Tasmania and had one child who was 4 years of age. The mother brought an application to the court seeking to relocate the residence of the child to Melbourne, where the mother's new partner lived.
- The court was not concerned about the difficulty and expense of the child spending time with the father, as the parties during the proceedings had agreed to the time that the child would spend with the father and how it would be funded.

- The father however raised concerns as to how he would communicate with the child by telephone and by Skype. The father said he spoke with a stammer, which meant that he would commonly experience fluency blocks when speaking. Due to this condition he said that he had a phobia about speaking to people on the telephone and in public.
- The court took into consideration the evidence of the father, however being aware of the father's love for the child, the court was satisfied that the father would make every effort to communicate with the child by telephone and/or Skype if the child was living in Melbourne.

## RECOVERY OR RELOCATION?

When a parent has a court order for the primary care of a child and the other parent does not return the child, the primary carer parent is able to bring an application for recovery. This application compels the Federal Police to collect and return the child in accordance with the court order. But what happens if there is no court order and the primary carer parent leaves their city of residence with the child without notice to the other parent? It is a foolhardy act, but one that must be responded to correctly by the remaining parent.

In a recent interim hearing, the father had filed an application seeking to restrain the mother from relocating with the children outside a radius of 5km of her residence in Sydney. Before the court had considered the matter, the mother relocated a significant distance away. The father sought an urgent 'recovery' order for the children. The court was not agreeable to the 'recovery' order (as there was no residence order) but was agreeable to an order compelling the mother to 'relocate' with the child within 14 days, to an address within the Sydney metropolitan area.

The Judge said that a limiting radius of 5km did not seem appropriate.

## ARE YOU ON A 'FISHING EXPEDITION'?

If you need to gather evidence for your case from a third party such as, a doctor, the police, an accountant or a bank, you can ask the Court to issue a subpoena to that third party.

A subpoena is issued by the Court and compels a person to produce documents or attend court to give evidence. There are (3) types of subpoena, (1) for production of documents, (2) for a person to attend court and give evidence, and (3) for production of documents and to give evidence in person.

A subpoena is a powerful tool to gather evidence which would otherwise be unavailable. However, the Court will ensure that the subpoena process is not abused and will not allow parties to use subpoenas as a mere "fishing expedition" to "trawl" through someone's documents in the hope of finding potentially useful information to support their case. A subpoena must pursue relevant information.

In a recent parenting case the father tried to take the subpoena process too far. The father sought to issue a subpoena to the mother's employer (from which she was on leave with no definite date of return) for a period spanning back 8 years and to include information regarding her work performance and staff complaints. The mother claimed that a subpoena in those terms essentially amounted to harassment and was vexatious and irrelevant.

The Judge refused to issue the subpoena and said that the documents requested would be of only marginal relevance to the parenting dispute and that the request for historical documents fell into the category of not satisfying any relevant "forensic purpose".

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