

# FAMILY Flyer

THIS ISSUE -

No. 226

- Date claimer – new seminars
- Which school deals best with bullying?

- Seeking a property settlement out of time

## DATE CLAIMER – NEW SEMINARS

Our next public seminar series starts on 19 August! This seminar will provide invaluable information on separation and property settlement. The topic is one of our most popular and it will be presented by our Principal, Accredited Family Law Specialist, Michael Lynch. You will have 2 dates to choose from.

### Upcoming dates are:

- 19 August – North Lakes (evening)
- 26 August – Brisbane (evening)

Mark your diary now and keep an eye out for the next e-Flyer, for more details.

## WHICH SCHOOL DEALS BEST WITH BULLYING?

An issue which is of real concern to many parents is bullying.

A recent case dealt with an application by a mother to change the school which her 11 year-old daughter attended because she had been subjected to bullying at the school. The father opposed the child changing schools. Both parents agreed that the child had been bullied, but they had different views about the best course of action to deal with it.

The mother wanted to change schools because:

- the bullying was not being dealt with adequately by the current school and it was having a significant effect on the child's well-being;
- the new school had a better 'no bullying' policy and better practical implementation of that policy;
- the child wanted to change schools and it would provide her with a 'clean slate'.

The father wanted the child to remain at her current school because:

- the bullying had been addressed by the current school and the issues had resolved;
- the child was a 'sensitive' child with 'pre-existing vulnerabilities' that would 'manifest' themselves at any school that she attended;
- it would be better for the child to remain at her current school to work on her vulnerabilities with the school counsellor and to see a child psychologist;
- the moving to a new school would risk undoing the progress the child had made in terms of resilience and coping strategies, as well as her good academic performance;
- the child had some friends at the current school, which may not be replicated at the new school; and

- the child had unrealistic views that changing schools would fix all of her social issues.

The Family Report writer concluded:

- the child had experienced bullying, and if it continued unabated she was at risk of developing depression and/or anxiety; and
- it would be in the child's best interests to change schools if the new school had a more organised and sensitive response to bullying.

The Judge compared each school's policies and concluded that:

- the current school only had a 'draft' policy and did not include an anti-cyber bullying policy, which did not give the Judge confidence that the school as a whole saw bullying as a major issue;
- the current school's approach appeared to be more aspirational whereas the new school had a specific policy which designated specific roles to those charged with investigating and resolving bullying complaints; and
- the most persuasive difference was the new school's culture which appeared to be more tailored to the child's needs.

The court ordered that the child be allowed to change schools.

## SEEKING A PROPERTY SETTLEMENT OUT OF TIME

A court application for a property settlement in a defacto relationship must be commenced within 2 years of the date of separation. If this time limit is missed however, the court has the discretion to grant leave to allow the application to be filed

'out of time' if hardship would be caused to the applying spouse or a child of the marriage.

A recent case considered such a situation.

- The parties had been in a defacto relationship for 17 years.
- The defacto wife tried to file a court application for property settlement nearly 23 months after the 2 year time limit had expired. The defacto husband sought for the defacto wife's application to be dismissed.
- The couple still owned property registered in joint names. The defacto wife argued that she was unable to complete the building of the home as the two of them were jointly registered on the title and she could not refinance. She claimed that not being able to obtain a property settlement and finish the building would cause her hardship.
- In seeking to explain the delay, the defacto wife said that she had a mental breakdown shortly after the separation, that she had a car accident and she had also attempted reconciliation with the defacto husband. The defacto wife was however unable to explain the delay of 7 months prior to her filing her application.
- While the court was satisfied that the defacto wife had an arguable case for property settlement as she would have experienced hardship if she was unable to make the court application, the 7 month delay was a significant delay and on that basis her application was dismissed.

**Note:** if you are separated you must get specialist family law advice so you know your entitlements and relevant time limits.

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