

# FAMILY Flyer



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No. 249

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## WEALTH OF INFORMATION

Our FREE fortnightly flyer provides a wealth of information on the constant changes in Family Law.

Below are some of our recent articles:

- Encouraging contact – what's required? ([Edition 230](#))
- Short distance relocations ([Edition 231](#))
- Setting aside a property settlement ([Edition 234](#))
- Parenting plan v. Consent orders ([Edition 235](#))
- Are you in a defacto relationship? ([Edition 237](#))

For any of these articles and more, visit our website at [www.mlfl.com.au](http://www.mlfl.com.au)

## FILE FOR DIVORCE BEFORE 30 JUNE – SAVE \$350!

The Court filing fee for a Divorce Application increases by \$350 (from \$845 to \$1195) – on 1 July.

To be able to file a Divorce Application you must have been separated for a minimum 12 months.

If you are looking to file a Divorce Application contact us now! We have a fixed fee option. Ph (07) 3221 4300.

## WHO STAYS IN THE HOUSE?

A recent case has considered who should stay in the house.

### The Facts:

- The husband and wife had been separated 'under one roof' for a month. They had 3 children aged 18, 16 and 12. Both spouses sought a Court order that they be entitled to 'sole use and occupancy' of the home pending financial settlement.
- The wife alleged that the husband was verbally abusive towards her in front of the children and had been involving the children in their adult issues. The husband denied these claims but said that the conflict was between the wife and the children and he was the peacemaker.
- Both spouses said it was unsustainable for them both to remain living 'under one roof', particularly as the eldest child was in the middle of her final exams.
- The husband worked and the wife was the primary homemaker and had not worked since the birth of their first child.

### Court Held:

- Whilst the husband's mother resided in the same city, if he was unable to reside with her (which he submitted was the case), it would be easier for him to find accommodation than the wife, as she had no employment skills or access to funds.



### Court Order:

- Given the time of the child's exams and the serious level of acrimony between the spouses, the court ordered that the husband vacate the property by the following day, and thereafter be restrained from entering the property without the wife's consent.
- The parties were restrained from removing any furniture without joint consent. The husband however could remove his clothing and personal items.

## FAQ

When someone separates they usually have a lot of questions. For these people the "FAQ page" on our website could assist.

This list provides the most commonly asked questions and provides straight-forward answers. Here are just a couple:

Q: Can I have a property settlement before my divorce is finalised?

A: Yes. You can begin proceedings after separation and if both parties agree, the Court can make Consent Orders to formalise your agreement

Q: What are the grounds for Divorce?

A: The only reason for a divorce in Australia is that there has been an 'irretrievable breakdown' of the marriage. You show this by being separated for 12 months.

For the complete list visit:

<http://www.michaelynychfamilylawyers.com.au/media/faq>

## CAN THE EX-BOYFRIEND SEEK CONTACT?

A court application for a parenting order can be made by the parents of the child, the grandparents and any other person concerned with the care, welfare or development of the child. A recent case has considered whether the category of possible applicants could include the mother's ex-boyfriend.

- An application was filed by the mother's ex-boyfriend seeking time with the child.
- The mother and father separated when the child was 18 months. From then until the child was 3, the mother dated the applicant (her boyfriend). At the time of the application the mother and father had reconciled and had been together as a family for approximately 2 years. Following the mother and the ex-boyfriend ceasing dating the ex-boyfriend had made persistent and unwelcomed contact with the mother. At the time of the application, the child was 8.
- The applicant sought orders for time with the child as he did not consider it in the child's best interest to have someone seen as a father figure in his life cut out. The child had at a time referred to the applicant as 'uncle', however had no meaningful contact with the child since he was 5 years of age.
- The mother and father sought for the application to be dismissed, either on the basis that the applicant had no standing under the Family Law Act or that he had no reasonable prospects of success.

### Court Found

- The applicant's relationship with the child was beyond that of an acquaintance or a babysitter, therefore in the circumstances the court was satisfied that the applicant was a person concerned with the 'care, welfare or development' of the child.
- The court determined however that an ongoing relationship between the mother and the applicant by way of child contact had a real risk of negatively impacting the mother and father's relationship. The court found that it was in the child's best interest to preserve the mother and father's relationship and that outweighed the applicant spending time with the child.
- The application was dismissed.

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