

FAMILY Flyer



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No. 250

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TIPS ON SURVIVING SEPARATION

Working through the emotional and legal stages of a separation are complex, but here are 3 basic steps that will definitely assist.

1. **Stay calm:** try not to make decisions in the heat of the moment. Make rough plans that meet your needs and keep any plans flexible.
2. **Get help:** it is importable to talk to someone about how you are going, we strongly recommend that you speak with a counsellor. It is also important that you get family law advice before embarking on arrangements for children and property division.
3. **Get a plan:** having obtained advice it is important that you formulate a plan and stick to it. You will save significant time and cost by following your own pragmatic plan with your family lawyer and not being led by the agenda of your former spouse.

If you have not obtained family law advice please contact us for a – no obligation – fixed cost (\$330 incl. GST) initial appointment, phone (07) 3221 4300.

KOREA INCLUDED ON LIST OF HAGUE CONVENTION COUNTRIES

Korea has joined the Convention on the Civil Aspects of International Child Abduction ("The Hague Convention"). This will now allow Australians to resolve international child abduction issues with the Republic of Korea more easily and will protect children who have been wrongfully removed.

SEVERING A JOINT TENANCY

There are two ways that couples can own real estate, either as "joint tenants" or "tenants in common". When couples separated they may need to consider what arrangements are in place.

Owing real estate as "joint tenants" means that if one of the parties dies then their half interest in the property automatically passes to the other owner regardless of the provision in their Will.

If someone holds an interest as "tenants in common" and they die, then the future ownership of their entitlement will be determined in accordance with their Will.

Most couples hold property as "joint tenants", therefore if separation occurs people may wish to look at severing the joint tenancy. This is a straight-forward process that then creates a "tenants in common" ownership. To do this, the consent of the other party is not necessary.

Severing the joint tenancy does not attract stamp duty. It is a process that goes through the Titles Office.

However, we note that severing a joint tenancy is not for everyone and may create hostilities between parties that inflame other matters and lead to delays in finalising or settling. It is therefore important to obtain specialist Family law advice in considering your circumstances and whether it is appropriate and to help you establish a plan.

We offer a fixed fee, no obligation initial consultation. Please contact the office on (07) 3221 4300 to arrange an appointment.



WHAT SCHOOL IS THE RIGHT SCHOOL?

This is a common question.

The law is set out in a leading case decided in 2000. In that case the court made it clear that the "best interest" of the child is the paramount consideration when deciding on a choice of school. Weight will be placed on any agreement in existence between the parents themselves.

It is certainly not the case that the residence parent automatically has the right to choose the school.

When the court looks at questions of this type, it does not compare schools to decide which is the best school in the community, it must regard the "best interest" of the child as the most important thing.

ARE BUSINESS DEBTS AFTER SEPARATION INCLUDED?

If a couple jointly operate a business during the marriage, but after separation only one of them continues to operate that business, should any debts of the business be considered as part of the asset pool? This question was considered in a recent case.

The Facts:

- The couple purchased a business during the marriage. It operated as a partnership. Both parties worked full time in the business until the birth of the first child after which the wife worked part time.
- After separation the husband continued working in the business as a sole trader. He dissolved the partnership and opened a new bank account. Subsequently he obtained other employment earning \$100,000 a year and placed a manager in charge of the business.

- The business was not successful with a manager, and the husband returned. The freehold of the shop and the business were for sale for some time. The business was not sold and was closed, the contents sold at a clearing sale and subsequently the freehold was sold.
- The husband said that there were outstanding debts of the business including GST on the sale of the freehold, unpaid income tax, unpaid wages and superannuation, and an outstanding electricity bill.

The Positions:

- The husband argued that the debts should be included. He paid the mortgage on the premises and continued to operate the business in the hope that it could be sold as a going concern and therefore recover more money than ultimately was recovered.
- The wife acknowledged that the GST must be paid but argued that only liabilities at separation should be taken into account and that the balance were debts solely of the husband incurred after separation.

Decision:

- The basic principle is that assets and liabilities should be valued at the date of the hearing. However, assets and liabilities to which a party has made no contribution are generally not included.
- The Judge accepted that the husband acted reasonably in continuing to operate the business and that the outstanding accounts of the business should be included as liabilities of the marriage, except for the income tax liability as it related to the income he earned after separation.

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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

