

FAMILY Flyer



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SEMINAR FOR ACCOUNTANTS – BOOK NOW!

We have recently received a number of requests from some accounting firms for us to provide a seminar to their staff on the challenges of property settlements in defacto relationships.

Specialist Family Lawyer, Belinda Jeffrey at our office, has prepared an excellent presentation entitled "Defacto break-ups and money" and presented it to a number of audiences recently and received great responses!

If any accounting firms are interesting in having Belinda present a FREE seminar focussing on this new and challenging area of defacto property settlement, please contact Emma on (07) 3221 4300. Help your own professional development and help your clients.

"CLOSE – UP" ARTICLE

Recent decisions from the Family Court – Appeal Division have highlighted the need for property division to be "just and equitable". This is appropriate, however some quite unexpected results have occurred. In this edition's "Close-Up" we look at one such example. To find out more read, "No property split after 12 year defacto relationship".

Q & A

- Q: Can I include other things besides property in a consent order?
- A: Yes, you can include spouse maintenance and arrangements for your children. You can deal with all of these issues at one time.

DATE CLAIMER - NEW SEMINARS

Our next public seminar series starts on 1 September! These popular seminars are presented by Accredited Family Law Specialist, Michael Lynch, and offer invaluable information on children, property and separation. There are 2 topics to choose.

- Separation and Children: 1 September, Albany Creek, and
- Separation and Property: 2 September – Mt Ommaney

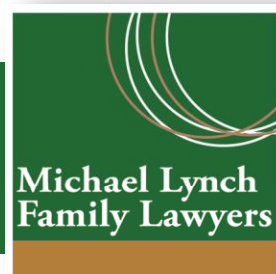
Mark your diary now and keep an eye out for the next e-flyer for more details.

DIVORCE OR PROPERTY SETTLEMENT – WHAT COMES FIRST?

This is a common question.

A divorce is an application to the court that dissolves the marriage. You have to have been separated for 12 months to apply for this. A divorce application does not address any other issues, e.g, property settlement or children's arrangements. You can commence property settlement negotiations or document an agreement (or go to court, if that is required) at any time after separation, therefore it can (and usually does) occur prior to a divorce application.

The answer then is that – in the normal course property settlement will be addressed first and a divorce application later.





WHEN IS AN INTERIM RELOCATION ALLOWED?

Relocation cases are always difficult because there are often many legitimate competing interests that the court must consider, although the "best interest" of the child will always be paramount.

Recently, a mother wanted to relocate to a new town with her 13 year old daughter. The mother had remarried and her husband had been working in the new town for 12 months prior to her application being heard. The mother's eldest daughter, who was 18 years old (and sibling to the 13 year old) had voluntarily moved and was living with her step-father while completing her senior education.

The mother sought to expedite the final hearing so that she and her family could have certainty moving forward. The father opposed both the relocation and the application for an expedited final hearing, on the basis of his ill-health. He stated that his ill-health would prevent him being able to adequately prepare for the final hearing and further sought that the matter be listed for "mention" only at some predetermined date in the future.

The father was successful in getting the final hearing trial dates vacated however the court then considered the issue of relocation on an interim hearing. The court was concerned that without a decision the parties and importantly, the subject child would be left in a state of limbo.

Ultimately, the court allowed the relocation on an interim basis. In this case the court considered the strongly held views of the child, the separation of siblings and the attachment of the child to each parent. The matter is currently subject to an appeal by the father.

MAKING PROMISES TO ELDERLY PARENTS

A couple were in financial difficulties and were likely to lose their family home.

The mother of the husband agreed to help out the couple by selling her own home and providing them with the net proceeds of sale to prevent the family home from being sold. The mother agreed to provide the net proceeds on the promises made by the couple that they would look after her for the remainder of her life and she could live indefinitely in their home or any future home. The mother sold her home and at her insistence an agreement was signed as drafted by the couples' lawyer.

The agreement stated that the mother would "gift" the net proceeds in exchange for being able to reside with them. There was no mention of the fact that the "gift" was to be used to reduce the mortgage and save the couple from an imminent sale of their house. Ultimately, the relationship between the couple and the mother broke down and co-habitation was impossible. The mother sought the return of her money. The couple argued that the money was a "gift" and therefore they did not have to return the funds.

The court determined that the mother had an "equitable lien" (an enforceable legal interest) over the family home, and it was against conscience for the couple to retain the benefit of the mortgage reduction without accounting to the mother for the gift and the written agreement did not circumvent the prior verbal agreement.

It was also held that statements of intention can be treated as promises where they are precise, relate to a critical matter and induce a party to enter into the agreement.

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