

# FAMILY Flyer



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## NEW SEMINAR SERIES – "SURVIVING SEPARATION" – STARTS 1 SEPTEMBER!

Our next public seminar series is starting on 1 September. These popular seminars are presented by our Principal and Accredited Family Law Specialist, Michael Lynch, and provide you with important separation advice, but without the legal jargon.

For ONLY \$30, you will receive a 1 hour information session and have the opportunity to ask questions. There will also be a **Special Offer** for all attendees.

### "Separation and Children"

- [Albany Creek](#): 6.00pm – Tues, 1 September – Wantima Country Golf Club – 530 South Pine Road, Albany Creek.

### "Separation and Property"

- [Mt Ommaney](#): 6.00pm – Wed, 2 September – McLeod Country Golf Club, 61 Gertrude McLeod Cres, Mt Ommaney

Seating is limited so register now by calling (07) 3221 4300 or email [law@mlynch.com.au](mailto:law@mlynch.com.au).

## RELOCATING FOR A NEW PARTNER

A parent wanting to move to be with a new partner, can pose real challenges. Here's a case that the court recently considered.

### Facts:

- The parties had 3 children, 5 year old twin girls and a 3 year old son. The parents lived in the Bendigo region where they had lived all their lives. Both of their extended families also lived in the Bendigo region.

- Both parents had repartnered following separation. The mother's partner lived in regional NSW and worked in his family's business. The mother's partner would be taking over the family business with his brother in the next five years, therefore it was not possible for him to move to Bendigo to live with the mother. The mother sought orders to be able to relocate the children. She offered to meet all travel costs. The cost of that travel being between \$10-15,000 per year.
- The father sought orders for the mother to remain in Bendigo and for the children to live in an equal time arrangement.

### Court Found:

- The mother and her partner had the capacity to meet the 12 flights per year.
- The court found it would be in the children's 'best interest' that the mother be permitted to move on with her life and pursue a relationship with her new partner, like the father

### Court Held:

- The mother was able to relocate, however the relocation was postponed for a period of 12 months to enable the children to further strengthen their relationship with the father.

## BREACHED AN ORDER? NOT IF THE VARIATION WAS AGREED

Parents can agree to vary the terms of existing court orders which relate to children.

If both parents have agreed to a variation, prior to the time of compliance, then a parent cannot be in breach of the original order.



A recent case demonstrates the point.

The father filed a Contravention Application alleging that the mother had breached orders relating to changeover arrangements.

The first alleged breach related to allowing the father to collect the child on a Wednesday at 2.00pm. However, at 1.21pm on the relevant day, the father sent a text message to the mother saying "As per your last message, I will pick the child up this Friday at 2pm". The Judge said that the mother had not breached the order because the father had agreed to vary the order prior to the time compliance was required.

The second alleged breach related to the location of changeovers. The orders were confusing in that they said that changeovers would take place at a nominated coffee shop, but from 1 January the changeovers would take place at the child's school. The confusion arose in the period between 1 January and when the child actually started school later in January, so the mother went to the school and the father went to the coffee shop.

In relation to this alleged breach, the Judge said that there were two possible interpretations, so the mother could not be in breach of the orders.

It is important to ensure that your court orders are correctly drafted so that there is no ongoing confusion and dispute about the interpretation. If you want to change the terms of an order, you should get the other parent's consent in writing (email or text message is fine) before the time for compliance with the order, otherwise you will be in breach.

## CAN YOU CHANGE YOUR MIND AFTER YOU'VE SETTLED?

Can you change your mind about a property settlement deal later, if the property valuation turns out to be wrong?

The short answer is 'No'. Once you have signed off on a property settlement deal in the form of Consent Orders and those orders have been issued by the court, then they are final and legally binding and they can only be changed in exceptional circumstances.

A change in the valuation of a property, or an argument that the valuation was wrong at the time of agreement, will not allow the orders to be changed, as a recent case demonstrated.

The case was an appeal by the husband against property settlement orders which were made by the Judge with the consent of both the husband and the wife.

### The facts:

- The orders required the husband to transfer his interest in a property to the wife on the basis that she would discharge the mortgage and pay him \$55,000.
- The husband argued that settlement discussions proceeded on the erroneous basis that the property was worth \$265,000 and not the \$295,000 he believed it was worth. The \$265,000 value came from a joint independent valuation which the parties had obtained, whereas the value of \$295,000 was only the husband's assertion and he had no other evidence of that value.
- The parties' competing property settlement claims had been listed for hearing and each of them was legally represented when their bargain was struck and the orders were made.
- The husband's lawyer pointed out to the Judge that it was the husband's assertion that as at the date of hearing, the value of the property had increased to \$295,000.
- The consent orders were signed by the husband and he was present in court (and legally represented) when the orders were made by the Judge.

### Court order:

- A consent order cannot be appealed on its merits by a party who consented to the order. An appeal must be based on specific grounds such as fraud, mistake, fresh evidence or the absence of jurisdiction.
- In circumstances where the husband indicated that he disputed the property valuation but decided to settle, it is not open to the husband to complain on appeal that the Judge did not explore an issue which, by the settlement, the husband determined did not require adjudication.

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