

FAMILY Flyer



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"CLOSE-UP" ARTICLE

Applications to the Court in parenting cases usually follow a 2 step process, firstly, an interim hearing and, secondly, (possibly) a final hearing. An interim hearing will usually be listed in court about 8 weeks after the filing of the Application. For more information see our article "[interim hearings](#)".

Due to the strict time constraints on an 'interim hearing' the court is limited as to the evidence it can determine. So what does the court do when serious family violence allegations are raised? To find out more read "[Considering family violence at an interim hearing](#)".

FREE BOOK – 'GUIDE TO FAMILY LAW' OUTNOW!

We have just released the latest reprint of our popular book – "**A Guide to Family Law – Everyday Answers**". Over the years, more than 130,000 copies have been printed and distributed – all at NO COST!

The book is FREE and is an invaluable resource and includes information on children's arrangements, child support and property division and is a MUST for anyone going through separation.

Deliveries are occurring this month so if you have not received your copy from us in the next 2 weeks and would like a copy (or if you are with an organisation and would like a bulk delivery) please call us on (07) 3221 4300.

7 COMMON TRAPS OF SEPARATION!

Separation can often be a complicated and confusing time. Most people don't know where to begin - here are some of the common mistakes that can be made.

1. **Going immediately to Mediation**- many people believe they have a legal requirement to go to mediation (often at a Family Relationship Centre). That is not the case. You must get legal advice first.
2. **Deciding not to speak to a counsellor**. There are usually great benefits in speaking with a counsellor.
3. **Thinking that domestic violence has to involve physical violence** - the definition of domestic violence is much broader than that and includes harassment and intimidation.
4. **Failing to document a property settlement agreement**.
5. **Not keeping a diary after separation** - it is of great assistance if you have a written record of events, including your financial arrangements and the children's arrangements and comments they have made.
6. **Not making a plan** - having a plan minimises stress, while maximising outcomes.
7. **Not seeking Specialist Family Law advice**.

To learn more listen to our Principal, Michael Lynch, discuss these traps on the Podcast on our website. [CLICK HERE](#) to listen.



DO GRANDPARENTS HAVE RIGHTS?

Grandparents have the right to make an application to the court for time with grandchildren. In fact grandparents are specifically referred to in the legislation as people who may apply for orders to 'spend time' with children or to have children 'live with' them.

In making any order the court must have regard to the 'best interest' of the child. In reality, if there is conflict and a lack of agreement between the parents of the child and grandparents, a court will have to consider the effect of any orders on the relationship between the parents and grandparents, which may in turn affect the child. Where a grandparent is keen to spend time with the child but that is not agreed to by the child's parents, the court is likely to order limited time with the grandparents.

In these cases, the court will also take into account the time that the grandparents have spent with the child to date, their relationship with the child and the practicality of time being spent. If there is a dispute between the parents of the child and the grandparents, the court may err on the side of the child's parents in limiting the extent of contact between the grandparents and the child.

VALUING A BUSINESS – WARTS AND ALL

Disputes often arise in family law cases about the value of a business that will form part of the matrimonial property and which will ultimately be under the control of one of the parties after settlement.

Depending on whether the party is retaining or relinquishing their interest in the business, will often effect their perception of the value of that business. To settle this dispute businesses are usually valued by an independent expert. If the parties are not happy with the independent experts value they

can obtain their own valuation and apply to have it considered in court.

The court recently considered a case involving the valuation of a business. The husband owned a health care facility in Sydney, having purchased it in the 1980's. The parties agreed to have the business independently valued. The wife did not agree with the valuation and employed another expert to critique the 'jointly instructed' experts report. The valuations differed widely, with the joint expert (JE) valuing the business at \$13 million and the wife's expert (WE) valuing it at almost \$24 million.

In this case both experts agreed that the husband had adopted an unusual business model. The major difference was that the JE accepted the business model as it was whilst the WE sought to base the value on a more commonly adopted business model.

The Judge was extremely critical of the way in which the WE approached the valuation. Her Honour considered it ill-conceived because it was not valuing the business in its current state, and was little more than valuing a theoretical construct divorced from the real situation. The Judge preferred the JE valuation and reminded the parties that the law of valuation in Australia is settled as "the price a willing but not anxious purchaser would be prepared to pay, and a willing but not anxious vendor would be prepared to accept, for that property at the time in question".

Q & A

Q:

Do we have to be divorced first, before an Order can be made regarding the children?

A:

No. A Court can make Orders about the welfare of children even if you are not divorced.

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