



Issue #41

family flyer

Introduction

The Family Flyer is a free community service by Michael Lynch Family Lawyers. The publication is designed to be informative and topical and to assist you in understanding the ever-changing field of Family Law.

This edition includes:

- A Wealth of Information
- Statistics in Relocation cases
- How does the Court deal with inheritances in Property Settlement?
- Child Support - what is "income earning capacity"?
- Seminar Series - FREE
- Assistance

A WEALTH OF INFORMATION

Welcome to all new readers of the Family Flyer.

The Flyer is produced in an email format each month and a hard copy every 3 months and provides you with a wealth of information.

Below are some of the recent articles:

- Family Law Act amendments - Equal Shared Parental Responsibility - Issue 39
- What is Spouse Maintenance? - Issue 39
- Property Settlements - Measuring Contributions - Issue 38
- Shared parenting - Required Factors - Issue 37
- What age is the right age to listen to a child's wishes? - Issue 36
- When are you separated? - Issue 35
- Grandparents contact with grandchildren - Issue 35
- Property Settlement - Time Limits - Issue 35
- Separation - "A to-do list" - Issue 31

For any of these articles and more, visit us at www.michaellynchfamilylawyers.com.au. JOIN NOW for this FREE email service to ensure you don't miss any further issues.

STATISTICS IN RELOCATION CASES

- In 2003, 1.1 million children (0-17 years) (23% of all children in this age group) had a natural parent living elsewhere.
- 76% of these children lived in one parent households. 84% of these children lived with their Mother.

* ABS - 2003

The Family Court recently commissioned a study of 46 relocation Applications:

- (Of the 46 Applications), 38 proceeded to a Final Hearing, while 8 were settled by consent.
- 36% of the movers were women.
- 69% were permitted to move.
- (The distance of the proposed move did not impact on the outcome of the case) i.e 67% of those going a long distance (or overseas) were allowed to relocate. 75% of those moving a short distance were allowed to relocate.

(Easteal, Behrens and Young)

HOW DOES THE COURT DEAL WITH INHERITANCES IN PROPERTY SETTLEMENT?

An inheritance received after separation?

The Family Court has stated that there are essentially two ways in which the matter can be dealt with, namely:

1. To include the "inheritance monies" as part of the property available for division; or
2. Alternatively, to deal with the "inheritance monies" (not in the property pool but) as a consideration in determining the percentage division.

Historically, the Court's preference has been that the inheritance 'should not be brought into account', (i.e as part of the property pool).

In determining the "percentage apportionment" the Court will consider factors such as the other parties' contribution to the inheritance.

A Prospective Inheritance?

Recent case law shows that "prospective inheritances" (i.e yet to be received) are





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increasingly being taken into account in the determination of property settlements between the parties to a marriage.

The Court has taken the view that the potential future receipt of an inheritance by one party, (i.e. being anticipated after a property settlement) may be a relevant consideration in the percentage division of property.

Can you "quarantine" an inheritance?

The Court has been prepared to "quarantine" property acquired by way of inheritance, usually limited to those circumstances where it is received either very late in the marriage or after separation.

Despite this general approach, parties may endeavour to remove property received (or to be received) by way of inheritance from the potential property pool by using a Binding Financial Agreement (if married) or a Cohabitation Agreement (if in a defacto relationship).

If parties wish to consider this they should obtain Specialist Family Law advice.

CHILD SUPPORT - WHAT IS "INCOME EARNING CAPACITY"?

A high income earning Father has unsuccessfully applied to vary the amount of child support he agreed to pay under a Child Support Agreement.

The facts were:

- The Mother and Father were married for 12 years and had 3 children.
- Both parents worked full-time as Actuaries.
- Following separation the children lived with the Mother and the parties entered a Child Support Agreement where the Father paid \$600 per week in child support.

- Shortly after the date of the Agreement the Husband left his full-time position for a part-time position where he worked 28 hours per week. The change of employment led to a significant decrease in his salary.

The Father applied to vary his child support on the basis of his "change in circumstances".

The Family Court dismissed the Father's Application stating that:

- The Husband's "income and earning capacity" was not different from his capacity at the time of the Agreement; and
- The Husband's decision to cease full-time employment and the impact of that on his income and employment opportunities was not a "special circumstance" under the legislation.

SEMINAR SERIES - FREE

We present FREE Family Law seminars on a number of topics.

If you are a business, organisation or community group and feel there would be benefit to your organisation in us presenting one of our FREE seminars, or you would like to discuss designing specific content to suit your audience, please contact us.

Our seminars are usually for one hour and include a presentation, powerpoint and hand out material. For more information visit us at www.michaellynchfamilylawyers.com.au.

ASSISTANCE

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