

FAMILY Flyer



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No. 273

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WEALTH OF INFORMATION

Our FREE fortnightly flyer provides a wealth of information on the constant changes in Family Law.

Below are some of our recent articles:

- How long for spouse maintenance? (Edition 261)
- Beware technology (Edition 267)
- How is superannuation valued? (Edition 266)
- Parenting plan v. Consent orders (Edition 235)
- Are you in a defacto relationship? (Edition 237)
- Tips on surviving separation (Edition 250)
- Do grandparents have rights? (Edition 255)

For any of these articles and more, visit our website at www.mlfl.com.au

CHILD SUPPORT TIPS – PART 3

Q: Would a binding child support agreement be a good idea for me – how long will it go for?

A: There are a range of situations where a binding child support agreement might assist, but be aware that there are only very limited situations where one can be 'set aside'. Parties can enter into a 'terminating agreement' to end a binding Child Support Agreement. If you are thinking about entering into this type of agreement please make an appointment to see us so we can give you advice specific to your situation.

NOT SUITABLE FOR PROPERTY SETTLEMENT?

The court was recently asked to consider a property division, where the couple had only been married for a short period of time, in total just over 3 years. The husband proposed that each party retain the assets they brought in to the relationship and retain those assets which they currently held.

The Judge agreed with the husband that it was not 'just and equitable' that there be a property adjustment between the parties. The court took into account that each of the parties had amassed the vast majority of their respective assets well prior to their marriage and furthermore, that they had not commingled their finances during their marriage.

A \$2M CONSEQUENCE FOR A HUSBAND'S NON-DISCLOSURE

The underlying legal requirement for each party in a property settlement is 'full and frank disclosure'. When it doesn't happen in a consent order the court has the power to set aside the order and make a new one.

In a recent case the husband was found - 10 years after the consent orders were finalised - to have failed to "fully disclose" some of the real property values. The court decision resulted in the husband having to pay the wife almost \$2M more.



The Appeal Court of the Family Court dismissed the husband's appeal against an order setting aside the consent order as a result of his failure to disclose to the wife "significant information".

The trial judge had found that there was a lack of disclosure causing a 'miscarriage of justice' by reason of the husband's failure to disclose a representation made by him to a bank that one of the properties had a value of \$700,000 not \$500,000 which he claimed on the consent order.

It was the trial judges view that if the representation had been disclosed the wife would have been on notice of the discrepancy between that representation as to value and the significantly different representation as to the value made in the consent order. The wife was denied that knowledge, and the opportunity to make further enquires as she might choose. She was also denied the opportunity to negotiate settlement terms that may have reflected the difference.

The consent order was set aside not because the property may or may not have had particular value, but because the wife's consent was not a fully informed consent.

POLICE AVOID SUBPOENA

The court recently considered an objection by the Police, to a subpoena they had received, on a number of grounds, including that the production of the documents was not in the 'public interest'.

The matter involved parenting arrangements. The mother argued that the father should not have time with the child on the basis that he was intimidating and controlling and he would subject the child to emotional abuse. The mother subpoenaed documents from the Police relating to a workplace incident involving the father, who was a police officer.

The first consideration was whether the documents would serve a "legitimate forensic purpose" to the mother's case. The court found that some of the documents (not all) would potentially assist the mother's case and that they therefore had a legitimate forensic purpose.

The court then considered whether these documents should be subject to the 'public interest immunity' and should not be produced. The Judge found that the immunity did apply in this case and found that disclosure of the documents would:

- be prejudicial to the ability of the Police to receive and investigate complaints against Police members;
- breach confidentiality of the complainants;
- undermine internal disciplinary proceedings;
- prevent future complainants from disclosing complaints for fear they would be disclosed; and
- jeopardise public confidence in the investigation process.

In coming to its decision, the court weighed up the harm that may result if the documents were disclosed against the benefit that would be gained from disclosure of the documents.

Q & A

Q: I have been served with an Application for a Divorce. Can I oppose it?

A: The only ground for a divorce is that the marriage has 'irretrievably broken down'. The evidence of this is 12 months separation.

The only way then to stop a divorce being granted, is to show the court that there has not been 12 months separation. If you seek to oppose the divorce, you must file a Response to a Divorce Application setting out your evidence why the divorce should not be granted. Any Response must be filed within 28 days of being served.

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