



family flyer

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Family Law - A Snapshot

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 Snapshot
- Type of Relationship
- Divorce
- Children
- Child Support
- Domestic Violence
- Spouse Maintenance
- Property Settlement
- Agreements
- Get Advice

A SNAPSHOT

Almost everyone knows someone who has been through a separation.

- What is Family Law all about?
- What do you need to consider?

Family Law is a broad and complex area, but here's just a snapshot.

TYPE OF RELATIONSHIP

The law differs depending on the type of relationship someone is in when they separate. It will either be a marriage or a defacto relationship.

- In Queensland (for a property settlement) a defacto relationship is defined as being a genuine domestic relationship for a minimum of 2 years or if there is a child of the relationship, there is no time period.
- Each State has its own laws regarding property settlements for defacto relationships.
- All children come within the Family Law Act.

DIVORCE

A Divorce Application is a specific Court Application that dissolves a marriage.

The requirement for a Divorce Application is 12 months separation.

CHILDREN

On 1 July, 2006 major changes were made to the Family Law Act, to remove the terms "residence" and "contact" and to replace them with "lives with" and "spends time with".

The new legislation also introduced:

- A presumption of shared parental responsibility, unless there has been family violence.

- That if there is shared parental responsibility the Court must consider whether the child spending "equal time" with each of the parents would be in the child's "best interests" and "reasonably practicable".
- If the Court does not make an Order for "equal time" the Court must consider whether the child spends "substantial and significant time" with a parent if it is in the "best interests" of the child and "reasonably practicable".
- "Substantial and significant time" is when the child's time with the parent includes weekends, holidays and days that do not fall on weekends or holidays and that time allows the parent to be involved in the child's daily routine and significant events and allows the child to be involved in occasions that are special to the parent.

CHILD SUPPORT

The Child Support Agency is responsible for assessing and collecting Child Support payments pursuant to a formula. The formula is based upon the taxable income of both parents, the number of children and the amount of time that each parent spends with the children.

If the Agency assessment is inaccurate a Departure Application can be made.

DOMESTIC VIOLENCE

The definition of "domestic violence" is wide and includes not only physical violence but also verbal harassment, property damage, intimidation and harassment.

Domestic Violence Applications are made through the State Magistrates Court. The making of Domestic Violence Orders is not a criminal act. The effect of an Order is for the Respondent to be of good behaviour and more often than not it will impose a distance provision.

SPOUSE MAINTENANCE

Spouse maintenance is not available to couples in a defacto relationship who have separated.

Spouse maintenance arises if at the time of separation between a married couple there is a difference in their incomes. If there is, the payment by the higher income earner is determined by the Court's discretionary consideration of the lower income earners "financial needs" as compared to the higher income earners "financial capacity".

Spouse maintenance can be paid on a periodic basis or as a lump sum payment.

PROPERTY SETTLEMENT

Property settlements in defacto relationships are determined by the law of each State. Under the Queensland legislation Superannuation is not property.

Under the Family Law Act property settlement in marriages include Superannuation as property and allow for Superannuation to be split.

There are broad similarities in the legal factors to determine a property settlement for a marriage or a defacto relationship, i.e:

1. Identify and value the matrimonial property.
2. Consideration of the parties respective contributions.
3. Consideration of the parties' future needs, eg. if there are children of the relationship.

There is no formula to determine the percentage division in a property settlement.

Property settlement determinations require an exercising of the Court's discretion.

AGREEMENTS

Children

Final Agreements for children can be documented either by a Court Consent Order or a Parenting Plan.

Property

Defacto relationship:

Property settlements can be documented by a Recognised Agreement (i.e either a Cohabitation or Separation Agreement).

Marriage:

Property settlement and Spouse Maintenance can be documented either by a Court Consent Order or a Binding Financial Agreement. BFA's can be done before marriage, during marriage or after divorce. Provided BFA's are completed properly (including a Solicitors Certificate for each party) they are enforceable.

Child Support

Child Support Agreements can be documented with a Child Support Agreement. To be enforceable the Agreement must be signed by both parties and registered with the Agency.

GET ADVICE

Michael Lynch Family Lawyers is one of the largest Specialist Family Law firms in Queensland having provided Specialist Family and Relationship Law advice for over 10 years.

We keep our clients and the community up-to-date for FREE with the Family Flyer. The Family Flyer is produced in an email format each month.

Subscribe to our email Family Flyer to receive the latest Family Law news and information direct to your inbox. Telephone (07) 3221 4300 or visit us at www.mlfl.com.au.

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