

FAMILY Flyer



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WELCOME!

Welcome to new readers of the Family Flyer who have joined after attending our recent public Seminar Series. The fortnightly Family e-Flyer is now read by over 5,000 people.

The final seminars for the year were a success, providing a great opportunity to not only give practical legal information but to also answer lots of audience questions.

Q & A

Q: My ex-partner and I are trying to negotiate a property settlement. We have a house in Australia and I have 2 investment properties in the UK, from when I previously lived there. If no agreement is reached, can the Court Order me to sell my property overseas?

A: The *Family Law Act* includes all property in the 'property pool', whether it is in Australia, or overseas. The difficulty, however, is that an Australian Family Court Order for property settlement cannot be registered overseas and is therefore not enforceable. The Family Court can only make Orders that are recognised overseas in respect of maintenance.

DISPENSING WITH SERVICE

Can you get a Court Order if you can't locate and serve the Court Application on the other spouse?

Yes, but provided certain steps have been taken.

In a recent case the Mother wanted to get an urgent Order for the issue of her son's passport – but couldn't locate the Father. The Mother and children (2 children, aged 16 and 14) hadn't heard from the Father in 8 years. The 16 year old boy was an accomplished soccer player and he had been offered a position to train with a premier English soccer club during his school holidays. The Mother told the Court that she had tried calling the Father and had left several voice messages and sent text messages without any response. She also had attempted an unsuccessful electoral roll search, as well as searching for another listed telephone number.

The Court found that the Mother had made all reasonable attempts to get in contact with the Father and the risk of the child not returning to Australia was low, as the UK was also a Hague Convention country. The Court Ordered that service on the Father be dispensed with and that the children's passports be issued.

PROPERTY SETTLEMENT – LARGE INITIAL CONTRIBUTION

The process of determining a property settlement is an 'inexact science', it involves calculating the value of the property and then considering the contributions each spouse has made, including both financial and non-financial contributions.

In a recent case the Court had to consider the 'percentage weighing' that should be attributed to a Husband's significant financial contribution at the beginning of the relationship.

The Facts:

- The couple were together for 9 years and had 2 children, aged 8 and 7.

- The property pool was \$464,000, including superannuation.
- At the date of cohabitation, the Husband had made a greater initial contribution, bringing in 2 properties that had a net value of \$286,050.
- The Husband argued that a 20% adjustment should be made in his favour, for his initial contributions.
- The Wife worked full-time at the beginning of the relationship, however since the birth of the children she worked on a part-time basis and earned \$25,000 per year. The Husband worked full-time and earned \$115,540.
- 3 months after separation the Husband received a redundancy payment of \$85,000.
- The Husband argued that only \$20,000 of the redundancy payment should be 'added back' into the property pool for distribution.
- The Husband proposed that he receive 65% of all the property. The Wife argued that she should receive 70%.

Court Found:

- \$31,660 should be 'added back' from the Husband's redundancy payment, which included 2 years of service, annual leave and a bonus, which accumulated during the marriage.
- A 20% initial contribution adjustment was too excessive and a 12% adjustment should be made.

Court Order:

- The Husband receive 47% and the Wife receive 53% of the property pool.

DNA TESTING

Navigating the processes and consequences of DNA testing is always difficult.

In a recent case before the Court the Father conducted DNA testing with the 16 year old son, without the Mother's knowledge and then

wanted to obtain reimbursement for Child Support and other payments.

The Court noted that this was an unfortunate situation for the child as through no fault of the child's, the child immediately risked losing the support of a parent. The Court then proceeded to discuss the fact that a parent can still continue to have a relationship with a child they have raised regardless of finding out they are not the biological parent.

The Facts:

- The Father and Mother lived together for 26 years and during that time the child was born. The Father's name was recorded on the child's birth certificate.
- After separation, the Father took the child with him when he went for his parentage test. A few weeks later the Father called the Mother and told her that the result showed that he was not the Father.
- The Father wanted the Mother to repay \$18,435 for the payments he had made towards the child's school fees, overseas holiday, Child Support payments and parentage test.
- The child was unaware of the results of the parentage test.

Court Found:

- The Court could not Order the repayment of the holiday and school fees, as these were payments made under a voluntary agreement between the Father and Mother.
- The parentage test was the Father's choice and done without the knowledge or consent of the Mother, so a repayment by the Mother could not be Ordered.

Court Order:

- The Mother should repay Child Support payments of \$12,969, within 4 months.

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