

# FAMILY Flyer



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## NEW SEMINAR – "SEPARATION & PROPERTY" – IN 2 WEEKS!

Our next public seminar is on 17 May. This popular seminar is presented by our Principal and Accredited Family Law Specialist, Michael Lynch, and will provide you with important separation advice, but without the legal jargon.

For ONLY \$30, you will receive a 1 hour information session and have the opportunity to ask questions. There will also be a **Special Offer** for all attendees.

### "Separation & Property"

- Brisbane – 1-2pm, Tuesday, 17 May, Berkleys on Ann, 255 Ann St, Brisbane City

Seating is limited so register now by calling (07) 3221 4300 or email [law@mlynch.com.au](mailto:law@mlynch.com.au).

## OUR GROWING TEAM

We are pleased to announce the appointment of Tarah Tosh as a new Senior Associate at our office. Tarah is an Accredited Family Law Specialist and practices exclusively in Family and Relationship Law.

Tarah joins our team with extensive experience in all aspects of Family Law and with excellent Family Law credentials having been a Senior Associate and Partner at previous Specialist Family Law firms. Tarah's expertise reinforces our position as one of the largest Specialist Family Law firms in Queensland.

## COURT ORDERS HOUSE SALE AS SYDNEY MARKET MOVING TOO FAST

In a recent property settlement case, the wife sought to retain the former matrimonial home which was located in Sydney. The property had been valued for the first trial at \$1.6 million. The trial did not proceed as scheduled and was re-listed a year later. An updated valuation was prepared, which then valued the property at \$1.8 million.


The husband sought for the house to be sold at auction, saying that the property had increased in value since the second valuation, and would continue to rise rapidly.

The Judge found that the court was unable to rely on the valuation provided by the expert given the volatile and rising market in Sydney, particularly the area in which the house was located. Therefore, the only way to achieve a just and equitable settlement in the fast moving Sydney market, was to list the property for auction.

The order provided for the wife to be entitled to bid at auction and buy out the husband's interest in the property. If she was successful, the orders specified that she would not have to pay stamp duty on the transfer.

## LIMITS ON CHILDREN TRAVELLING OVERSEAS

Children travelling overseas (and efforts to retrieve them) has received a lot of media attention recently. It's timely therefore to look at what orders the Family Court can make to stop children travelling overseas.



Family Law 'Watch List' orders are usually sought in circumstances where there is a risk that a parent may take a child from Australia without the other parent's consent. The Australian Federal Police ("AFP") place the child's name and particulars on the 'Watch List' when an order is made by a court. It is only when there has been an order discharging the Watch List Order or the child attains the age of 18 years, that the AFP remove the child's name from the list.

Recent data from the AFP has indicated that there are currently over 11,000 names on the 'Watch List' but they estimate that only about 3,000 names are current. For this reason consideration should be given as to whether a 'sunset clause' is included in a court order. Inclusion of a 'sunset clause' may avoid a long-forgotten 'Watch List' order surfacing years later, causing inconvenience and distress.

## CHILD SUPPORT TIPS – PART 1

Q: I want to agree to receive a lower child support payment than what the Child Support Agency has currently assessed me to receive - is that possible?

A: This is possible and can be done by the parties entering into a binding child support agreement. But remember – if you are entitled to a government benefit, the government won't be making up the shortfall. The Child Support Agency will create a notional assessment and you will be treated as if you are in receipt of the child support calculated under that notional assessment.

## A REMAINDER INTEREST – WHAT'S THAT?

The Court was recently asked to determine whether the wife's joint interest in the 'remainder' of a property should be considered as part of the property settlement.

The wife was listed on the Title Deed as a tenant in common of the 'estate in remainder' of a house meaning she would receive ownership when her parents (who occupied the house) died. Her parents, who were still alive were 'joint tenants' of a 'life estate' in the house. This allowed them to live in the house

until they died. The wife argued that the husband had made no contribution to the house and that, in any event, she had acquired the interest after separation.

The Court determined that the 'remainder interest' was not 'matrimonial property' that could be divided, but was a 'financial resource' of the wife and was relevant in the determination of the "percentage split" between the parties in the property settlement. The Court ordered that the wife's remainder interest in the property be valued, subject to the life tenancy of the parents.

## FAMILY LAW - FAST FACTS

- The number of marriages for every 1,000 people has generally fallen in the last 40 years (9.3 in 1970, 7.4 in 1980, 5.3 in 2001, 5.5 in 2008).
- Cohabitation before marriage has increased significantly in the last 40 years. In 1975, only 16 per cent of those married lived together beforehand, increasing to 23 per cent in 1979. By 2008, however 78 per cent of those married lived together beforehand.
- Queensland and Tasmania recorded the highest proportion of couples living together prior to marriage.
- The divorce rate from second marriages is a little higher than that from first marriages.
- In 2009-10 the Queensland Police recorded 49,372 domestic and family violence incidents (an increase of 11.5 per cent on the previous year) and laid 8,033 charges for breach of a domestic violence order.
- In the same period, the courts received 22,754 applications for domestic violence orders (an increase of 8 per cent on the previous year).

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