

FAMILY Flyer



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'CLOSE-UP' - ARTICLE

It goes to the core of the Family Law system in Australia. What is required for a divorce? Many people are unaware and it can come as a shock to find out.

Find out more in our latest 'Close-Up' article: "[Getting a Divorce – what about 'fault'?](#)"

DATE CLAIMER – NEW SEMINARS

Our next public seminar series starts on 6 September! These seminars will provide invaluable information on separation and property settlement. The topic is one of our most popular and it will be presented by our Principal, Accredited Family Law Specialist, Michael Lynch. You will have 2 dates to choose from.

Upcoming dates :

- Tuesday, 6 September 2016 - Brisbane (lunch time), and
- Wednesday, 7 September 2016 - Upper Mt Gravatt (evening)

Mark your diary now and watch the e-Flyer, for more details.

NEW COURT FEES

It's a new financial year and the Courts are increasing filing fees. Here are some of the new fees payable to the Courts, from 1 July;

Family Court

- | | |
|--|-------|
| ● Application for consent orders | \$160 |
| ● Initiating Application (Parenting <u>and</u> Financial, Final and Interim) | \$660 |
| ● Response to initiating application | \$330 |

Federal Circuit Court

- | | |
|--|-------|
| ● Application for divorce | \$865 |
| ● Application for divorce (reduced fee) | \$290 |
| ● Initiating Application (Parenting <u>and</u> Financial, Final and Interim) | \$660 |
| ● Response to initiating application | \$330 |

IS THERE A PREFERENCE FOR SINGLE-GENDER OVER CO-ED SCHOOLS?

No. The Family Court will not be drawn into such abstract analysis, just as it will not be drawn on which school is better. Understandably these types of Court Applications are common place at the end of any given year, particularly when a child is about to commence schooling early the following year. Parents are often eager to have the decision made so that they can have certainty and commence preparation for the upcoming school year.

If you cannot reach agreement with the other parent about where your child should attend school, it's important to bear in mind that the Court will not make a finding that a single-gender school is superior to a co-ed school or vice versa. The court accepts that both systems of education are well within societal norms, and therefore either option is acceptable.



The issue that parents should be looking at is whether a particular school meets the child's particular needs, not comparing the schools in the abstract. Whether the school is single-gendered, co-ed, or performs better on NAPLAN – of itself - will have no bearing on the decision by the Judge.

On a practical level most decisions will be based on the locality of the school relative to where the child lives the majority of the time.

THE HOUSE IS IN MY NAME, BUT IT BELONGS TO MY PARENTS

In a property settlement, any real property that has one or both of the spouses on the Title to the property, will nearly always be included as an asset of the parties. There are a few circumstances however, where this will not be the case.

In a recent case the court was faced with an application by the husband that the wife was the beneficial owner of a property (and therefore it should form part of the pool of assets to be divided between the parties). The wife opposed this claiming that her 82 year old mother was the beneficial owner of the property

Background

- Before the husband's application, the wife had made an application in the State Supreme court to have the title for the property transferred from her name to her mother's name. The Supreme Court made a declaration that the wife held the property 'upon trust' for her mother. The court also ordered that the wife transfer all of her interest in the property to her mother.
- The wife's mother had contributed the whole of the purchase price.
- Prior to the purchase of the property, the wife's mother had previously purchased other properties, all of which were either in the wife's sole name or the wife's name appeared on the title along with the parent's names. Upon the sale of these properties the wife did not receive any funds.

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- The wife's parents paid all of the rates for the property.
- The wife signed a mortgage document naming herself as mortgagor and her parents as mortgagees for the principal sum of \$350,000;
- Renovations were carried out to the property. The wife's mother contended those renovations were paid for by her. The husband gave evidence that he contributed financially to the renovations, but he contradicted himself in relation to how much he contributed.

Decision

The Judge found:

- the wife's parents had no intention to give to the wife any beneficial interest in the property at the time of its purchase, nor did the wife have any intention of taking a beneficial interest in it.
- the wife's mother had made it clear via conversations with the husband and wife that she would retain beneficial ownership of the relevant property;
- the payment of rates by the wife's parents and that the wife received no sale proceeds (from previous properties) was consistent with the wife's claim that her mother intended to retain beneficial ownership of the property.

The Judge ordered that there be a declaration that the wife held the property 'on trust' for her mother, so it was not included in the property division.

Q & A

Q: When is the right time to see a Solicitor?

A: You should always speak to a Family Law Solicitor as early as possible. If you are thinking that you may separate from your partner, it is a good idea to book an initial consultation to discuss your rights and obligations, as well as the steps you may face in your separation. If you see a Solicitor early on, you can plan ahead and make informed decisions. If you leave it too late, you may miss a key date which may be fatal to your matter, or you may incur further expenses unnecessarily if we are required to act urgently to protect your interests.

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