

FAMILY Flyer



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FINAL SEMINARS – BOOK NOW!

Don't miss our last public seminar series for the year. "7 Secrets to Surviving Property Settlement" is our most popular seminar and a must for anyone that is going through a separation and wants to know the best way to navigate a property settlement and reduce financial pressure.

Although the presentation is valued at over \$500, the attendance cost is ONLY \$30, payable at the door.

Accredited Family Law Specialist, Michael Lynch will present in an easy-to-understand style and answer questions, such as:

- Am I separated if we are still in the one house?
- Will I be prejudiced if I move out of the house?
- How is property divided?
- What are the consequences for my superannuation?
- How do I document a property settlement?
- And much more...

"7 Secrets to Property Settlement"

- [Brisbane City](#): 1-2pm – Tuesday, 6 September, Berkleys on Ann, 255 Ann Street, Brisbane City
- [Upper Mt Gravatt](#) – 6-7 pm, Wednesday 7 September 2016, Southern Cross Sports Club, Cnr Klumpp Road & Logan Road, Upper Mount Gravatt

To register, call (07) 3221 4300 or email law@mlynch.com.au. BOOK NOW, seating is limited.

'CLEAN BREAK' PRINCIPLE

When finalising a property division, the Family Law Act is quite clear, that there should be finality – meaning a 'clean (financial) break' between spouses with no ongoing financial connection.

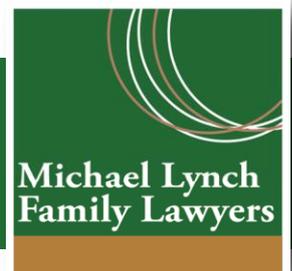
The logic being that it avoids highly likely complications arising later on.

However, there can be rare exceptions. In a recent case, the separated former husband and wife lodged a consent order with the court however as it proposed the ongoing joint ownership of a business the Registrar refused to make the order. They sought a review of the decision.

The business, which was conducted by two companies, operated child care centres. The husband and wife were joint directors and equal shareholders of the respective companies. Given the success of the businesses and the forecast of continued growth they wished to continue to operate the business jointly.

They had both received independent legal and financial advice and were aware that if there was any future breakdown in the relationship between them, with respect to the operation of the business, that dispute would need to be resolved in a different court.

On the review, the judge accepted that the proposed orders were 'just and equitable' and that there did not need to be a complete separation of the parties financial interests.



OBTAINING A PASSPORT WITHOUT CONSENT

Both parents are required to sign an application for a child's passport to issue, unless one parent has sole parental responsibility. A recent case considered an application to dispense with a parent's consent to obtain a passport.

Facts

- The 15 year old child wished to travel overseas on a school trip, which required the child to obtain a passport. The mother had requested the father sign an application for a passport, the request had gone unanswered. The mother filed a court application seeking to dispense with the father's signature to obtain the passport.
- The father filed no response document but did attend court on the court date seeking an adjournment of the matter and requesting that testing be conducted for an alleged condition suffered by the child. The mother opposed both of these requests.
- The father had had no contact with the child for 3 years prior to the application. He indicated to the court that he would consider signing an application for the passport if he was able to accompany the child on the school trip.

Finding:

- The father's demand to accompany the child on the trip when he had not spent any meaningful time with the child for the previous 3 years was not in the child's best interest.
- The father had been aware for some time of the mother's request for a passport. The court found that the proceedings could have been avoided if the father had responded to the mother's request for a passport.

Decision:

- The need to obtain the father's consent for a passport be dispensed with.

- The father pay the mother's costs of the application.

CHANGING A PARENTING COURT ORDER

A person wishing to change an existing parenting order, should give careful consideration to the reasons why they are doing so. They must be careful that they are not seeking to re-agitate old arguments which existed at the time of making the previous parenting order. A 'significant change in circumstances' is required to be established before a court will vary an existing parenting order.

In a recent case, the court noted that the parents (2) children aged 14 and 11 had been litigating parenting matters since their children were very young. It was evident that the children had been adversely impacted by the continued litigation. The parents agreed to Orders by consent on the first day of the final hearing. In doing so, the evidence before the court was not tested, including the evidence of certain experts. The mother was legally represented whilst the father was self-represented, but despite this the mother sought to vary the orders by commencing a new application only 9 months after the previous orders had been made.

The short time-frame of itself was not a bar to the proceedings but the arguments put forward by the mother were. The mother's case relied on arguments which existed at the time of making of the orders. What she was really asking the court to do was for the Judge to exercise the power of a court of appeal, which was inappropriate in that forum. The mother had the opportunity to litigate those issues at the original trial date but chose not to, instead consenting to orders. It was obvious that she had a form of "buyers regret", not a 'significant change in circumstances'.

If you are considering varying an existing parenting order, then we would urge you to contact us to make an appointment so that we can assist you in your deliberations and discuss your prospects.

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