

FAMILY Flyer



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PUBLIC SEMINAR SERIES STARTS IN 2 WEEKS!

Don't miss this opportunity to learn from Accredited Family Law Specialist, Michael Lynch. Only 2 seminars on the popular topic “7 Secrets to Surviving Property Settlement”.

In “plain-English” Michael will explain the complexities, identify the common traps and (more importantly) give you the tips to overcome them. Anyone about to separate or recently separated needs to know this!

For ONLY \$30 you will receive a 1 hour information session with handouts and have the opportunity to ask questions. There will also be a **SPECIAL OFFER** for all attendees. There are only 2 seminars:

“7 Secrets to Surviving 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! Payment at the door.

FAMILY VIOLENCE STATISTICS

In the last 12 months the media and the broader community has had an increased focus on the problem of family violence. Here are some statistics that clarify the seriousness of the problem in Australia.

- one in four women (23%) has experienced family violence (ABS)

- one in three women (34%) has experienced family violence by a current or former partner (AIC, 2005)
- 1.1 million women have experienced violence by a previous partner since the age of 15 years (ABS,2006)
- Indigenous women are 40 times more likely to be victims, 13 times more likely to seek refuge accommodation and 35 times more likely to be hospitalised for family violence related assault (AIHW, 2006)
- One to two women are killed each week by their current or former partner (ANROWS).

LIFE EXPECTANCY & PROPERTY DIVISION

A person's life expectancy can be taken into account in determining a property division. It could be considered in terms of the 'percentage division' when looking at the 'future needs' component for each spouse.

An appeal was recently granted where the trial judge had made the finding that the husband's 'future needs' in the context of whether or not he received a kidney transplant, were likely to be less than that of the wife's. The trial judge had allowed a 4.5% adjustment in favour of the wife because her 'future needs' would be greater than that of her husband, and whilst other issues were considered there was no other fact taken into account for the 'future needs' adjustment.

The difficulty did not lie in the weight attributed to the adjustment, as this is a matter for the trial judge's discretion but in the fact that the trial judge could not actually make a finding as to life expectancy on the evidence before him. The evidence was inconclusive and the trial judge stated as much, therefore he could not then allow an adjustment.

The matter was remitted for re-hearing.



DISCLOSURE – "BUT WHAT IF I'M ONLY A DISCRETIONARY BENEFICIARY?"

In a property division under the Family Law Act each spouse has a duty to make 'full and frank disclosure' of all documents relevant to the case within their "possession or control".

A recent case has considered whether a husband failed to disclose Trust documents when he was only a beneficiary to a discretionary trust.

Facts:

- The husband was a discretionary beneficiary of a Trust established by his father. Apart from mentioning his interest in the discretionary trust, the husband produced no documents in relation to it. His case was that he had asked for the information, but that it had been refused. It was undisputed that the husband and his father had fallen out. The wife did not issue a subpoena to the trustee to produce the documents.
- The trial Judge held that the husband was obliged under the Family Law Rules to disclose the Trust documents as they were in his legal possession and control, as he was a beneficiary and his brother was the appointer of the Trust.
- The Judge considered the husband's interest as a beneficiary in the Trust (of an indeterminate value) as a 'financial resource' of the husband's. Taking into consideration other 'future need' factors, he awarded the wife a 10% adjustment.
- The husband appealed arguing, that the trial Judge incorrectly concluded that he had access to undisclosed assets.

Appeal decision:

- As the husband was only a beneficiary of the Trust he only had the right to access financial documents to ascertain that the Trust was properly administered but had no obligation to produce discretionary trust documents. It could not be said that he had control of the Trust to warrant the disclosure.

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- Whilst the Judge could find that the benefit that the husband received from the Trust was unquantified, the Judge was not entitled to find that the husband had failed in his obligation to disclose.

Court Order:

- That the property order be set aside and the matter remitted for re-hearing.

CONSENTING 'WITHOUT ADMISSION' – WHAT DOES THAT MEAN?

Agreeing to a Domestic Violence Order (DVO) being made 'without admission' is often considered the quickest and easiest solution when faced with a domestic violence application, especially in circumstances where the respondent does not wish to defend the action and agreeing to the order will not affect their livelihood (e.g. they don't require a "weapons licence") or otherwise impact significantly their life (a DV order is a civil order, not a criminal order).

However, if you have children and intend to commence family law proceedings it is important to be aware of its potential impact. Prior legislation made specific reference to whether or not a DVO was consented to, and it was held in a 2007 case that in circumstances where the evidence was not tested, as is the case of a consent 'without admission' DVO, the court could not find that the 'presumption of equal shared parental responsibility' had been rebutted by family violence.

The legislation and particularly that section has been amended so that the court is now required to reflect on factors far broader than whether or not a person on a 'without admission' basis consented to the making of a DVO. The flow-on effect being that in this broader context it may be far easier for the court to consider that the presumption has in fact been rebutted and equal shared parental responsibility may not apply.

If you have been served with a Domestic Violence Application and are not sure what to do, call us on 3221 4300 for a fixed cost initial consultation.

