

FAMILY FLYER

BROUGHT TO YOU BY



APRIL 2019

your family law update
advice | service | solutions

IN THIS ISSUE

- ▶ TIPS ON SURVIVING SEPARATION
- ▶ ARE YOU IN A DEFACTO RELATIONSHIP?
- ▶ APPOINTMENT OF SENIOR ASSOCIATE AMY RYAN
- ▶ WHAT DOES CHILD SUPPORT COVER?
- ▶ WHO BENEFITS FROM A GIFT?
- ▶ 10 QUICK TIPS BROCHURE - FREE

TIPS ON SURVIVING SEPARATION.



Working through the emotional and legal stages of a separation are complex, but here are 3 basic steps that will definitely assist.

- 1. Stay calm:** try not to make decisions in the heat of the moment. Make rough plans that meet your needs and keep any plans flexible.
- 2. Get help:** it is important to talk to someone about how you are going, we strongly recommend that you speak with a counsellor. It is also important that you get family law advice before embarking on arrangements for children and property division.
- 3. Get a plan:** having obtained advice, it is important that you formulate a plan and stick to it. You will save significant time and cost by following your own pragmatic plan with your family lawyer and not being led by the agenda of your former spouse.

If you have not obtained family law advice please contact us for a no obligation fixed-cost initial appointment, phone (07) 3221 4300.

ARE YOU IN A DEFACTO RELATIONSHIP?

Under the Family Law Act, defacto couples have the same rights as married couples to seek a property settlement or spouse maintenance when they separate. So the question is, how do you know if you are in a defacto relationship?

Firstly, the couple needs to have been in a "genuine domestic relationship." There are various indicators as to whether that is the case, some of these indicators include:

- The duration of the relationship;
- The nature of their common residence;
- Whether a sexual relationship exists;
- The degree of financial dependence;
- The ownership and use of property; and
- The care and support of any children

If there is a "genuine domestic relationship", then one of the following needs to exist, i.e:

- The couple had been in the relationship for at least 2 years; or
- There is a child of the relationship (in which case there is no time requirement); or
- It would be unjust not to recognise a defacto spouse's financial or non-financial contribution.

Each matter is unique and has to be addressed according to your personal circumstances and needs. To speak with one of our experienced family lawyers, call us on (07) 3221 4300 to organise a no-obligation initial appointment at a fixed-cost. We will be happy to assist you in person, over the phone or by Skype.

APPOINTMENT OF SENIOR ASSOCIATE AMY RYAN.

We are pleased to welcome back Amy Ryan to our team. Amy is a Family Law accredited specialist and has extensive experience in the full range of family law matters, including property and parenting. Amy worked for Michael Lynch Family Lawyers prior to temporarily relocating to the United States, during which time she worked in child protection.
Welcome back, Amy!



WHAT DOES CHILD SUPPORT COVER?



Parents in Australia have a legal obligation to provide financial support for their children, which continues following separation until the child turns 18 (and on occasion, beyond). So, what does this payment actually cover?

What does financial support for children cover?

Child Support covers expenses for children such as food, housing, clothes, school costs and other extra-curricular activities. It applies to all parents whether married, in a de facto relationship, who have never lived together or never had a relationship, and also may include same-sex parents.

The Child Support Agency (CSA) (Department of Human Services) applies a formula to determine how much child support should be paid. A child support assessment takes into account the number of children involved, the age of the children, the income of each of the parents, and the level of care each parent provides for the children.

Payments made for the benefit of the child

Payments to third parties made for the benefit of the child can be credited against a parent's child support payable. This can be either by agreement between the parents, or a parent can ask the CSA to credit certain "prescribed expense" payments for up to 30% of their assessed child support liabilities. "Prescribed expenses", include but are not limited to:

- child care payments;
- school or pre-school fees;
- school uniforms and prescribed text books;
- medical and dental expenses;
- housing expenses such as mortgage repayments, rent or bond payments; and/or
- motor vehicle costs.

The child support obligation is not just a moral one but a legal one and does not stop because of events, such as, your child does not live with you or you don't have contact with your child.

A parent with whom the child lives cannot stop time with the other parent, if child support is not paid.

If you have separated and need assistance in pursuing child support payments or are liable to pay child support but are seeking a change in an assessment or thinking about a child support agreement, contact us for specialist family law advice.

WHO BENEFITS FROM A GIFT?

When a gift is received by a couple, which spouse should receive the benefit for it in a property settlement?

When determining a property settlement, the court is required to consider the "contributions" made by each spouse. This includes "financial contributions" and "non-financial contributions".

Frequently, the parents of one of the spouses will provide a financial gift to the couple, which raises the question as to whether that spouse should receive a "percentage benefit" for that contribution?

The court has long held that "where there has been a gift or advance by a relative to one of the parties to the marriage, the first step is to determine the ownership of the benefits, i.e. whether the parent giving the gift intended to benefit themselves, the parties, or one of the parties".

Where a gift is made solely to one spouse (e.g. a gift by parents to their daughter) and that spouse applies the property to the marriage, that is a direct financial contribution solely by that party and will be assessed in that way.

In other cases, if the evidence shows that the gift was intended to benefit both spouses then the court will most likely treat that as an equal contribution by both of them.



Professional Webinar Series - FREE



FOR COUNSELLORS: Wednesday 3rd APRIL, 2pm
Topic: *"Understanding Step-Parent Issues."*



FOR ACCOUNTANTS: Wednesday 8th MAY, 2pm
Topic: *"Family Law and Defacto Couples."*



FOR COUNSELLORS: Wednesday 15th MAY, 2pm
Topic: *"Parenting and the Family Law Act."*

For more information: www.mlfl.com.au/media/webinars



10 QUICK TIPS BROCHURE - FREE TO ORDER

If you work in the accounting, legal or counselling industries, it is likely that you have had someone who is separated ask you for advice.

Did you know what to say? Quite right – you're not meant to – but wouldn't it be great if you could help? To help you in these situations, we have developed a brochure you will find useful – "10 Quick Tips" for your reception, call us on (07) 3221 4300 or email law@mlynch.com.au.