

FAMILY FLYER

APRIL 2020



BROUGHT TO YOU BY



your family law update
advice | service | solutions

IN THIS ISSUE

- ▶ DO GRANDPARENTS HAVE RIGHTS?
- ▶ WHO STAYS IN THE HOUSE?
- ▶ 7 COMMON TRAPS OF SEPARATION
- ▶ SPLITTING SUPERANNUATION IN PROPERTY SETTLEMENTS
- ▶ A WEALTH OF INFORMATION
- ▶ PROFESSIONAL WEBINAR SERIES - FREE

DO GRANDPARENTS HAVE RIGHTS?



Grandparents have the right to make an application to the court for time with grandchildren. In fact, grandparents are specifically referred to in the legislation as people who may apply for orders to 'spend time' with children or to have children 'live with' them.

In making any order the court must have regard to the 'best interest' of the child. In reality, if there is conflict and a lack of agreement between the parents of the child and grandparents, a court will have to consider the effect of any orders on the relationship between the parents and grandparents, which may in turn affect the child. Where a grandparent is keen to spend time with the child but that is not agreed to by the child's parents, the court is likely to order limited time with the grandparents.

The court will take into account the time that the grandparents have spent with the child to date, their relationship with the child and the practicality of time being spent.

WHO STAYS IN THE HOUSE?

Following separation if a couple are unable to live 'under the one roof' and cannot reach agreement for one of them to leave the house, either of them can apply to the court to obtain an order for exclusive occupancy. A recent case provides a useful insight into how to determine an interim order for exclusive occupancy.

The Facts

- The couple separated after 20 years. The husband was 61 and the wife was 59. They had two children aged 19 and 16. The wife commenced property proceedings and sought interim orders restraining the husband from residing in the home. At that time they had already been separated 'under the one roof' for one year.
- The wife said that the husband refused to leave the house and she had observed him to be under the influence of alcohol on occasions. She presented a report from her GP diagnosing her to have insomnia and situation anxiety fears. She also said the children were starting to suffer from the stress and that their relationship with the father was strained.
- The husband said that he did not have the capacity to pay for rental accommodation and that he had health problems (joint pain and arthritic changes) that his doctor said would make it difficult for him to work. He sought to stay in the house and the wife leave.

Court Found

- The court found that joint occupancy was unacceptable.
- The husband had the funds to rent as while he claimed to be retired, he remained a property investor through the parties' company that derived significant income from rental investments. His financial capacity was better than the wife.

Court Held

- That the husband leave the house within 7 days.



7 COMMON TRAPS OF SEPARATION

Separation can often be a complicated and confusing time. Most people don't know where to begin – here are some of the common mistakes that can be made.

- 1. Going immediately to mediation** – many people believe they have a legal requirement to go to mediation (often at a Family Relationship Centre). That is not the case. You must get legal advice!
- 2. Deciding not to speak to a counsellor** – there are usually great benefits in speaking with a counsellor.
- 3. Thinking that domestic violence has to involve physical violence** – the definition of domestic violence is much broader than that and includes harassment and intimidation.
- 4. Failing to document a property settlement agreement.**
- 5. Not keeping a diary after separation** – it is very helpful if you have a written record of events, including your financial arrangements and comments that have been made.
- 6. Not making a plan** – having a plan minimises stress, while maximising outcomes.
- 7. Not seeking professional family law advice.**

Avoid frustrations! Call **(07) 3221 4300** to book a fixed-fee appointment with one of our Family Law Specialists to discuss your personal circumstances.

SPLITTING SUPERANNUATION IN PROPERTY SETTLEMENTS

A property settlement involves a consideration of the complete pool of property between the partners, including superannuation.

Not only is superannuation included as 'property' but a member's fund is also able to be 'split' with the other spouse. This dramatically increases the options available in structuring a property settlement and is a common feature of most property divisions.

How does superannuation splitting work?

By court order or agreement, the Trustee of the fund is directed as to what proportions to split the fund. The split amount is not realised as a cash payment, but is rolled over into an alternative account for the other spouse. Such a split can be in any percentage but can only be made if the member account being split has a balance value exceeding \$5,000.



A WEALTH OF INFORMATION!

Our monthly *e-Flyer* provides a wealth of information on the constant changes in Family Law. Some of the recent topics we've covered in our e-Flyers are:

- The 'how to' of de facto property settlements
- Child support and school fees
- How to get custody of a child
- Can I record conversations with my ex?
- Are you entitled to spouse maintenance?




You can also find these articles and more in the '*Family Law News*' section on our website www.mlfl.com.au



Professional Webinar Series - FREE

DATE CLAIMERS for APRIL and MAY ARE HERE!

 **FOR SCHOOLS: Tuesday 28th APRIL, 3.30pm**
Topic: *"Family Law Implications for Schools"*

 **FOR ACCOUNTANTS: Wednesday 13th MAY, 1pm**
Topic: *"The Treatment of Companies and Trusts in Property Settlements"*

 **FOR COUNSELLORS: Wednesday 20th MAY, 1pm**
Topic: *"Out of the Mouths of Babies" – Children's Wishes in the Family Court"*

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