

FAMILY FLYER

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IN THIS ISSUE

- ▶ WE'VE GOT AN AMICABLE AGREEMENT - WHAT NOW?
- ▶ IS EMOTIONAL ABUSE 'DOMESTIC VIOLENCE'?
- ▶ WHAT IS 'PARENTAL RESPONSIBILITY'?
- ▶ HOW TO PREPARE FOR A FAMILY REPORT
- ▶ CONFERENCE OR PROFESSIONAL DEVELOPMENT DAY? NEED A SPEAKER?

WE'VE GOT AN AMICABLE AGREEMENT – WHAT NOW?



Having been told by a client that an amicable agreement has been reached for a property settlement, we sometimes find that problems arise and the "agreement" is not what it seemed. Here are some of the common problems;

- There is a broad 'understanding' but when details are required it is clear there are two different understandings.
- There has not been full and frank disclosure of financial information and one party is, therefore, coming to the "amicable agreement" from a position of ignorance.
- Each party has differing views as to the asset and liability values.
- Either one, or both, of the parties have not had any family law advice. So, the agreement was based on good intentions, rather than an informed understanding.
- There is a power imbalance between the parties and some level of coercion is being applied by one party to achieve an agreement.
- Consequences of the proposed agreement have not been considered, e.g. capital gains tax that may arise from the sale of an investment property.

We certainly don't wish to undermine agreements – to the contrary, our aim is to assist amicable parties to get a property settlement agreement documented and in so doing to minimise time and cost.

To best ensure that your agreement gets documented promptly and efficiently, make sure you get your own family law advice. It is not there to de-rail your agreement but to ensure it is informed and fair.

We provide a no obligation fixed cost initial appointment. To make an appointment, call us on **(07) 3221 4300** or email law@mlynch.com.au

IS EMOTIONAL ABUSE 'DOMESTIC VIOLENCE'?

In Queensland, 'emotional abuse' constitutes Domestic Violence and, therefore, can be the basis for a Domestic Violence Order (DVO). So, what are some examples of this?

The Domestic & Family Violence Protection Act 2012 (Qld) provides a non-exhaustive list of examples that might constitute this type of behaviour.

Emotional or psychological abuse:

Some examples include:

- following a person when the person is out in public, including by vehicle or on foot;
- remaining outside a person's residence or place of work;
- repeatedly contacting a person by telephone, SMS message, email or social networking site without the person's consent;
- repeated derogatory taunts, including racial taunts;
- threatening to disclose a person's sexual orientation to the person's friends or family without the person's consent;
- threatening to withhold a person's medication;
- preventing a person from making or keeping connections with the person's family, friends or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person's cultural identity.

Domestic Violence laws are different in each State of Australia.

'Domestic Violence' in Queensland has a wide definition and includes much more behaviour than what has been listed in this article including 'psychological and financial' abuse. Such behaviour is serious and unacceptable and action can be taken to stop it. If you have concerns about a situation you are in, call us for advice.

WHAT IS 'PARENTAL RESPONSIBILITY'?



"Parental responsibility" is the legal starting point when looking at arrangements for a child. Its purpose is to allow the child to achieve their full potential as a person by the involvement of both of the children's parents in the child's life.

How do parents fulfil that responsibility? Parents are expected to maintain the child until the child reaches 18 and until that time the parents have the authority to make decisions regarding the child's major long-term issues, including name, education, religion and health.

Parents can also make decisions in respect of the child's day-to-day care while the child is with them, which includes the child's manner of dress, the child's diet, discipline of the child, the people the child associates with, and what the child can view on TV, bed time, etc.

The presumption:

The Family Law Act says that the court must apply a presumption that it is in the 'best interests' of the child for the parents to have equal shared parental responsibility (ESPR) for the child. This is unless there are reasonable grounds to believe that a parent has engaged in abuse of the child or family violence.

Challenging the presumption:

If the presumption of ESPR does not apply or is rebutted, then the court may decide that one parent has "sole parental responsibility", which means that parent can independently make all decisions about the child's major-long term issues.

If you have personal circumstances you would like to discuss with a family law expert, contact our office today. You can call us on **(07) 3221 4300** for a fixed-fee no obligation appointment. We will be happy to assist you over the phone, in person or by Skype.

HOW TO PREPARE FOR A FAMILY REPORT

A family report is a very important document in a parenting case. It is prepared by an independent expert and the information it contains and the recommendations made, are powerful. If you are involved in one, you should be well prepared. Here are some valuable tips.

What is a Family Report?

A family report is a written assessment of a family, based on interviews with the parents and other significant adults and the children.

Preparing for Interviews

- Tell the truth. Misrepresentations and lies can be easy to spot by trained professionals.
- Remember key information and avoid relying on written information. Personal recollections are seen as more genuine.
- Consider your proposal for parenting arrangements, particularly how it will impact on the children.
- Consider the other party's proposal and how that would work if that is what ends up happening.
- Consider the needs of each child and keep them in mind throughout the process.
- Answer questions directly, without providing unnecessary detail.
- Nothing you say to the report writer is confidential. Anything could end up in the report.

Preparing Children

Parents can provide age-appropriate information to the children prior to the day of interviews. For example, keep it simple and straight forward.

Try not to create anxiety and don't exaggerate or minimise the child's role and views.

Don't tell them what to say – or not say.

For more information regarding family reports, please do not hesitate to contact our office on **(07) 3221 4300** to arrange an appointment with one of our experienced family lawyers.

CONFERENCE OR PROFESSIONAL DEVELOPMENT DAY? NEED A SPEAKER?



If you are looking for a speaker on Family Law for your next Conference or Professional Development day, please give us a call.

We present seminars each year to accounting, financial planning, legal firms and other groups. Seminars normally run for 1 hour and include a PowerPoint presentation and additional handout material. Furthermore, we can come to your offices.

If you want to better equip your staff to serve clients or you would like to offer your clients valuable tips, call us on **(07) 3221 4300** to organise a FREE seminar. For topic suggestions, visit www.mlfl.com.au, *Seminars and Webinars* section.