

Spring 2010

FAMILYLAW NEWSMATTERS

Welcome to the Winter 2010 Edition of Family Law Newsmatters. In this newsletter we bring you:

- Security and property division
- Mediation – what to expect
- School Holiday Information
- How to deal with birthdays



*Put your family first -
find out what's fair at
Family Law Matters*



At Family Law Matters, we have dedicated ourselves to the practise of Family Law. Our Solicitor Director, Antonella Sanderson, established the firm in 2002 (originally named Sanderson Partners Lawyers), as a result of recognising a need in the community for a practical and sensitive approach to Family Law.

Our philosophy is that it is in our client's interests to settle their matter in a way that is fair, reasonable and realistic, and that their legal costs reflect this manner of settlement.

We achieve this by approaching each matter in a sensitive yet sensible way. By empowering our clients with the knowledge of their rights and responsibilities, we assist in securing a cost-effective, practical outcome.

Our Head Office has moved to Cronulla.

Our new contact details are:
87a Cronulla Street,
Cronulla NSW 2230
PO Box 192, Cronulla NSW 2230
Ph: (02) 9523 3007
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We are still able to accommodate our clients and new referrals at Penrith and in Sydney CBD. We have access to boardrooms at these locations. Call us on 1300 FAM LAW to make an appointment at a location that suits you.

With our knowledge of your rights and responsibilities, we ease the pain of separation.

A NOTE FROM ANTONELLA

Recently, the Sydney Morning Herald reported in an article (4.4.2010) that the Family Court had dismissed an application made by a Father in relation to what he described as an offensive bumper sticker that his ex-Wife had displayed on her car. The sticker read: "All men are idiots. I divorced their king". The Father's application, in essence, was that his daughter should not have to see the sticker on his ex-Wife's car. Judicial Registrar Loughnan (as he then was – noting he has now been appointed as a Judge effective 12 July 2010) dismissed the Father's application as a waste of public money. Although this case is regrettable, particularly so when one considers the type of conflict the daughter must be exposed

to, it highlights the necessity for applicants to obtain legal advice on whether their matter has any merit. If the application is dismissed, the applicant may be ordered to pay the other party's costs. It is always wise to make sure you seek legal advice from someone well familiar with Family Law jurisdiction before bringing an application before the Court. What you spend on some legal advice may save you in the long run in costs, time, emotion and, as in this case, embarrassment.

Antonella

SEPTEMBER/OCTOBER SCHOOL HOLIDAYS

There is often much debate amongst parents about how to calculate the half-way point in the school holidays. We receive many calls from confused and distressed parents when change-over plans fall apart.

According to the NSW Board of Studies website, the last day of Term 3 is Friday, 24 September 2010 and the first day of Term 4 is Monday, 11 October 2010. Your child's school may have additional pupil-free days, you should always check start and conclusion dates with your school. If your child attends a private school, their holidays may be different.

Your Orders or Parenting Plan may define a different method for how the holiday should be arranged. If they don't, we offer this by way of assistance:

- Assuming the holiday period starts on and includes Saturday, 25 September 2010 and finishes on and includes Sunday, 10 October 2010, this gives a total of 16 days for this holiday.
- The half-way point, being day 8, is Saturday, 2 October 2010.
- You may wish to discuss change-over to occur at about 5:00 pm on Saturday, 2 October 2010.

However if there are Orders in place, you should make sure you comply with the Order in relation to the half-way point and change-over. If you are not sure what to do about school holidays, you should contact us to seek some advice. Applications for Contravention of Orders are commonly filed against a parent who has not properly complied with school holiday provisions.



BIRTHDAYS

When negotiating parenting arrangements a lot of parents agree to share time in the school holidays but forget to specifically negotiate special occasions such as birthdays.

Try and remember that your child's birthday is about making an enjoyable and memorable experience for them. Children remember their birthdays. It should be a time for birthday cake, blowing out candles, and joyful exchange of presents. It will certainly not be in the child's best interests to feel as if they are caught in the middle of a tug-of-war between their parents on such special occasions.

If possible, you should try and negotiate plans that work well for everyone, particularly the children. The last thing you want to do is arrange times that effectively mean the children have to rush between households and won't get to enjoy a party or proper celebration, at either home.

An example of an arrangement that could work for the children's birthday time may be:

- On the day of the child's birthday, the child spends time with the Mother after school, or 3:00pm if not a school day, on the night prior to the child's birthday, until the commencement of school the following day, or until 3:00pm if not a school day, on the child's birthday; and

- The child spends time with the Father from after school, or 3:00pm if not a school day, on the child's birthday until the commencement of school, or 3:00 pm if not a school day, the day immediately following the child's birthday.

This arrangement could then swap for the following year to ensure the child has the opportunity to experience a full and relaxed birthday celebration with each of their parents.

Parents often forget to include provisions for their own birthdays. Sometimes parents aren't too worried about their own birthday, and arrange a celebration for the next occasion of contact with the children. However, some parents prefer a special provision for their birthday.

An example of an arrangement that could work for the Mother's and Father's birthday may be:

- If the day is a school day, the children spend from after school to 8:00 pm with the parent celebrating a birthday; or
- If the day is a non-school day, the children spend from 5:00 pm on the day prior until 5:00pm on the day of the parent's birthday.

The usual living arrangements then re-commence after the birthday is over, so that the parent who is scheduled to usually take care of the children receives the children back into their care.



SECURITY AND PROPERTY DIVISION - FAMILY BREAKDOWN

"I couldn't possibly leave him. I have no financial security."
This is a common cry heard by the Family Lawyer.

There can be an emotional breakdown but parties continue to live together due to financial insecurity.

Sally and Steven were very unhappy. They had lived together for 20 years. The relationship had badly deteriorated in the last two years over finances.

In 1989 Sally injected \$100,000.00 into the relationship which was used to reduce the mortgage debt over Steven's home.

Steven's home was situated on the beach. It was a very modest house and, at the time, valued at \$120,000.00.

Steven held a senior position in the private sector. However, he had no assets other than his home due to a previous property settlement with his former wife. He had 3 children to the previous marriage.

Steven was injured at work. He could no longer continue to work. He received termination payments and superannuation entitlements totalling \$700,000.00 and a damages payment of \$300,000.00.

Steven applied \$200,000.00 improving the house. Land prices soared and the house is now worth \$1.8 million with uninterrupted ocean views.

Steven and Sally then lived on the residual investments and superannuation which was approximately \$800,000.00.

Sally had not given much thought to the fact that Steven was the sole registered owner of the home.

There was discussion about Wills and future security for Sally as Steven had a health scare. Sally became aware that Steven

had made provision for her in his Will which gave her the right to live in the home for life and to draw money from the income, as opposed to the capital, from the investments. After Sally died the home was to be sold, pooled with the investments and divided equally between Steven's three children. This caused great stress and strain on the relationship as Sally argued she had not been provided for. *"I am at the mercy of your children. I will lead the rest of my life with my cap in hand. I invested \$100,000.00 20 years ago when you had nothing."*

There was a great deal of common sense in what Sally said.

To add to Sally's fear was the share market decline and the income the parties were receiving had diminished. Sally would have to live off that income and could not touch the capital.

Sally had decided that the only way she could have financial security was to separate from Steven and make an application to the Family Court for a division of property. This relationship had broken down over financial insecurity.

There is little doubt Sally will find financial security and independence through the Family Court. This was a better option for Sally than staying in the relationship and living in financial fear. There were other options which could have avoided this problem: if the parties entered into Binding Financial Agreement when the disputed started surfacing, both Sally and Steven could have had financial certainty and avoided arguments.

This type of case needs to be treated very carefully. There will be opportunities to raise other solutions for this insecurity. It is important to get advice early, rather than let the insecurities damage the relationship. Those opportunities need to be recognised by your Family Lawyer and seeing a family lawyer who is experienced in these matters will be crucial. At Family Law Matters we have the skills and experience to guide you, and help you reach financial security.



MEDIATION

Mediation is a buzz word in the arena of Family Law. In fact, parents are unable to initiate proceedings in the Family Court for parenting orders without first having attended mediation.

But, what is mediation?

Mediation is a process for problem solving.

Peter and Linda had one child Michael. Michael lived with Linda. Peter wanted the child to spend each alternate weekend with him. Linda was resisting Michael's involvement with the child. Michael sought legal advice. Peter and Linda had to attend mediation. The mediator invited both parties to speak about their concerns. Linda was concerned Peter was a dare devil and Michael was placed in danger when with Peter. In addition, Peter became very angry and abusive towards her new partner Ralph in front of Michael. Peter expressed his concern that he would not play a part in his son's life unless he and Linda could come to some agreement.

The common ground between Peter and Linda was their love for their child Michael. This was the building block upon which the mediation could progress. The mediator was able to use this common ground and convert the concerns of both parties into positive questions. Peter and Linda could then discuss solutions.

1. How can the child be protected when participating in activities with Peter?
2. How can lines of communications be improved between Peter and Linda?
3. How can changeover times be improved for the child Michael?

The mediator encouraged Peter and Linda to talk to one another. *"What if I purchased some good protective motor cycle gear for Michael, would that make you feel better?"* Linda responded, *"That would certainly relieve a lot of my concern"*. **Progress.**

The issue of Ralph and his involvement certainly created difficulties for the parties. It was apparent that any contact between Peter and Ralph, either face to face or on the phone, resulted in argument. This argument impacted on the child.

"Let's talk about the changeover times". The mediator had moved the parties to look at the question. *"What is the problem at changeovers?"* Linda was quick to point out that Peter would become aggressive towards Ralph in front of Michael. Michael would become upset. *"What if Ralph did not come to the changeover and changeover was at some neutral point? I would feel a lot better about that"*, said Peter. *"But why shouldn't I bring somebody with me?"* said Linda. Both Michael and Linda went back and forth about this issue.

It was decided Linda could drop Michael off to Linda's mother and Peter could pick Michael up from her place. This avoided potential for conflict. **Progress.**

Finally, it was agreed that Peter spend each alternate weekend with Michael and that Michael would telephone his father rather than the other way round avoiding accidental contact with Ralph. This was a very successful mediation. Both parties had their concerns addressed and acknowledged. An agreement had been reached in the interests of Michael.

Not all mediations are as successful as this one but with goodwill and effort, positive outcomes can be achieved through mediation.



FamilyLawMatters

This newsletter is designed to provide information, not legal advice. Please note the people and examples used in this newsletter are fictional characters. You should ensure you obtain legal advice as the law applies to individual situations in different ways.

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