

Spring '08

FAMILY LAW NEWSMATTERS

Welcome to the Spring 2008 Edition of our Newsletter.

In this edition:

- Info about our new locations
- What is "Parental Responsibility"
- Property and Dangerous Agreements
- School Holiday information



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

FAMILY LAW MATTERS UP AND RUNNING

We are now officially known as Family Law Matters, having said "farewell" to the name "Sanderson Partners Lawyers" on 30 June 2008. Soon we will have new window signage with our updated logo design. Last season we mentioned a possibility of a new branch - we have gone one better, we believe! Antonella has established access to serviced offices with professional board room facilities in the following locations:

- Katoomba
- Miranda
- Rockdale
- Sydney CBD

With our head office at Penrith and access to serviced offices in other locations, we are able to offer our clients the convenience of professional family law advice across Sydney. If you would like to see a solicitor in any of our new locations, please call our Penrith Head Office on **1300 FAM LAW** (1300 326 529), or **4722 6716** and we can make an appointment at your location of choice.



I wish I had a big red flag to wave outside my office warning anyone contemplating separation to get some advice **first**. Separating from your significant other is an emotional time, a stressful event. Decisions are sometimes made based on advice from family and friends, or your gut instincts. You wouldn't make a decision about having major medical surgery without consulting your surgeon about options and risks – similarly you shouldn't make decisions about leaving a relationship without getting sound family law advice. You need to know what your rights and responsibilities are, and how your choices can impact your life later down the track. Be sensible – get some advice first.

Antonella



FamilyLawMatters

www.familylawmatters.com.au

STAFF PROFILE



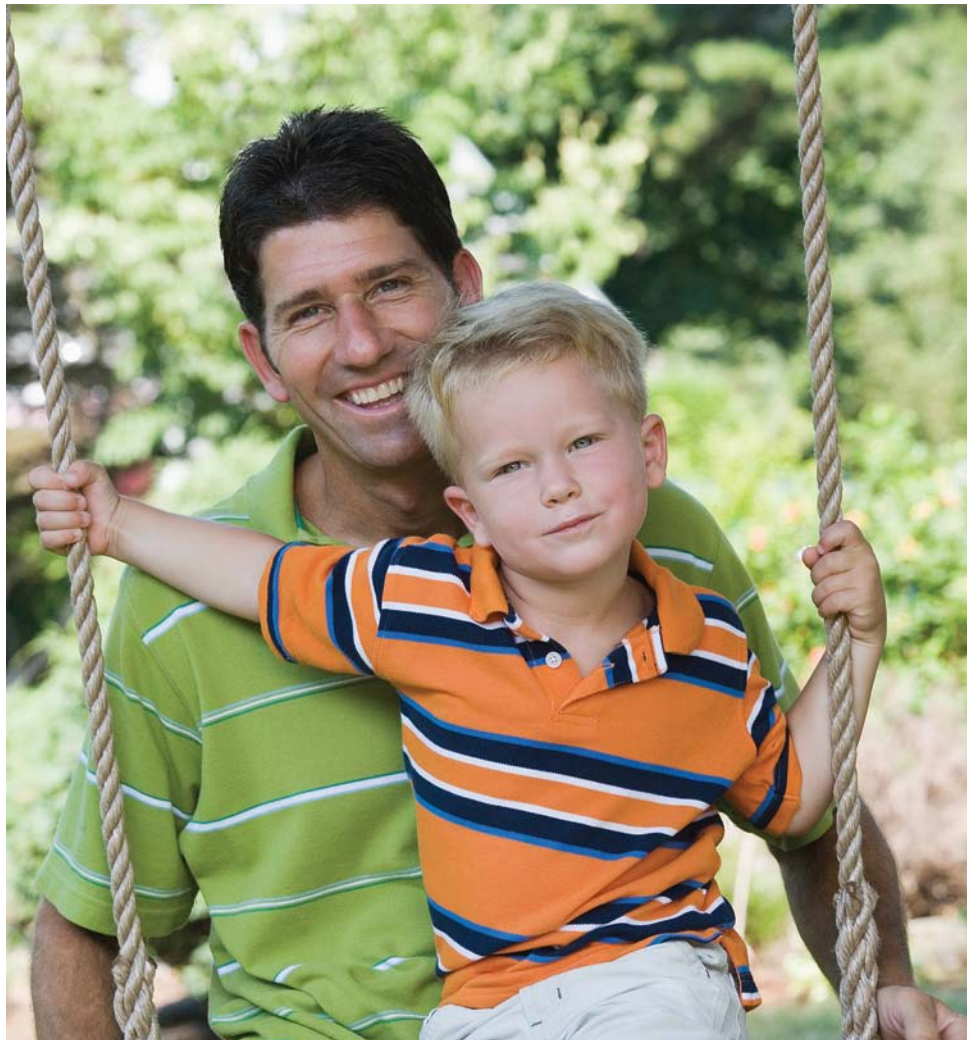
Angela Maltese
Accounts Clerk

We take this opportunity to profile Angela Maltese, our Accounts Clerk. Angela is an important member of the Family Law Matters team - she is responsible for our account administration, and is the first point of contact if our clients have queries about their accounts, or wish to make payment arrangements.

With years of accounts experience, including experience in other family law firms, Angela skilfully applies herself to managing client accounts in a sensitive way, consistent with our firm culture.

On a more social note, Angela is happily married with three beautiful children. Although juggling family and work is difficult for the best of us, Angela never misses a beat, even if she's been playing "Mum's Taxi" all weekend! Last year the Maltese family went on holidays to Italy, and Angela's screen-saver photo album of wonderful Italian landmarks makes us all wish we went along too!

Angela can be contacted on Tuesdays or Thursdays at the office, or feel free to email angela@familylawmatters.com.au with any accounts queries.



SPRING SCHOOL HOLIDAYS

This year, we have a long weekend included in the Spring School Holiday period. Unless you have specific Orders dealing with this particular holiday period and long weekend provisions, usually we would add the long weekend in as part of the School Holiday Period. There is often much debate amongst parents about how to calculate the half-way point in the school holidays, and every time we come close to a holiday period we receive calls asking for help on this issue.

According to the NSW Board of Studies website, the last day of Term 3 is Friday 26 September 2008 and the first day of Term 4 is Monday 13 October 2008. Please note this applies to most public schools. If your children attend a private school, their holidays may be different. You should always check with the school. Your Orders or Parenting Plan may define a different method for how the holiday should be calculated. If they don't, we offer this by way of assistance:

- assuming the holiday period starts on and includes Saturday 27 September 2008 and finishes on and includes Sunday 12 October 2008, this gives a total of 16 days for this holiday;
- The half-way point, being day 8, is Saturday 4 October 2008;
- You may wish to discuss changeover to occur at about 5:00pm on 4 October 2008.

However if there are Orders in place, you should make sure you comply with the Order in relation to the half-way point and changeover.

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.

PARENTAL RESPONSIBILITY

Carrying on from last season's newsletter, we again talk about Parental Responsibility.

Under the current Family Law system there is a presumption that each of the parents of a child has parental responsibility for that child. This presumption applies to each parent whether or not they are living together or they have separated. The Family Court will apply the presumption of equal shared parental responsibility when making an order relating to a child.

The presumption of equal shared parental responsibility may not apply if the Court is persuaded there are reasonable grounds to believe that a parent of the child has been, or is, abusive to the child or has engaged in family violence. This presumption can also be overturned on the ground that it would not be in the best interests of the child.

What does it mean to have equal shared parental responsibility for children? Parental responsibility is defined by duties, responsibilities and obligations. It is interesting to note that in the Family Law Act there is no mention of "rights" when dealing with parental responsibility.

In the ordinary course of events, parents make decisions in the interests of their children on two planes:

1. Day-to-day issues such as meal times and menus; school lunches; teeth cleaning; shower time, etc; and,
2. Major long-term issues such as education; religion; cultural upbringing; health, etc.

Parents who live together often make decisions independently of one another in relation to day-to-day issues. There is no real need for major consultation

about the evening meal; what toothpaste is purchased; when the children shower (except if they are teenagers and take all the hot water); and the like. These decisions are often made by one parent and, unless the other objects, there is little discussion about the day-to-day routine. Because parents have separated, there does not need to be major discussion and consultation relating to the day-to-day management of the children unless there is opposition to the management of day-to-day issues based on reasonable concern.

Major long-term issues are discussed at length by parents during the time they lived together. Separation does not change the need for consultation between parents in relation to long-term issues. Education, Health, Religious and Cultural issues need to be discussed and agreed between parents.

Tom had his son spending time with him on one weekend. Without any consultation with the mother, Tom had the child baptised into a particular Christian religion. This is wrong and a breach of Tom's responsibility to consult with the mother of the child relating to a major long-term issue.

Yvonne made a major decision in relation to the medical treatment for her disabled daughter without consultation with the father. She has breached her responsibility by not consulting with the father in relation to the management of this major long-term issue.

If parents consult, and discuss major issues relating to their children, they fulfil their responsibility. The Family Court will treat the obligations of parental responsibility seriously and there will be applications relating to parental responsibility brought before the Court.

“ Parental responsibility is defined by duties, responsibilities and obligations. ”



PROPERTY SETTLEMENT - DANGEROUS AGREEMENTS

Peter and Linda had been married for 20 years. The marriage was unhappy.

The 3 children of the marriage were all adults and self sufficient. Linda felt financially vulnerable. She had been the primary homemaker and parent while Peter pursued his career. Linda had now moved back into the workforce and was well paid but could not get full-time employment.

Peter was consumed by guilt as he had been having an affair for the last 5 years of the marriage.

Approximately 3 years ago Peter and Linda separated. They sought some advice from a family friend who was a lawyer specialising in land development. He told them that there was no need to go through the tedious process of having the Court make Orders for a division of property. The Family Law Act allowed for a written agreement which was binding on both parties. However, he didn't really understand the formalities required for that agreement to be enforceable.

The Lawyer did know that both Peter and Linda needed independent legal advice. He sent Peter to his mate who was a specialist criminal lawyer.

The pool of assets available for division between Peter and Linda was comprised of the following:

1. A quantity of furniture and household contents with a value of: \$10,000.00
 2. A home with a value of: \$500,000.00
 3. A car with a value of: \$40,000.00
 4. A cash investment portfolio with a value of: \$100,000.00 and,
 5. Peter's superannuation valued at \$80,000.00
- This amounted to: \$730,000.00



Peter who was consumed by guilt and Linda worried by her financial situation, reached an agreement that Linda would retain the furniture, the home, the car and one-half of the investments. This amounted to \$600,000.00 being 82%, which was far in excess of what the Court would award.

The advice that Peter received was "Get rid of Linda and get on with your life". The advice that Linda received was "You deserve every cent".

Peter did not receive advice that he might be foolish; and, Linda did not receive advice that the agreement was generous and it was absolutely essential for the agreement to adhere strictly to formal requirements or else it may not hold up.

The agreement was reduced to writing but some of the formalities required for the agreement to be binding were overlooked. The reality is that they were not properly

considered. Their attitude was, 'Near enough was good enough'.

In accordance with the agreement Linda exclusively occupied the house and spent money on it over the next 3 years.

Peter on the other hand finished his affair and his guilt is no longer a driving force.

He seeks advice from an experienced Family Lawyer as to whether or not the agreement reached 3 years ago is enforceable.

The sad reality is that the agreement is not enforceable. Peter instructs his Lawyer to make an application for an equal division of property. Linda is understandably distraught.

Binding Financial Agreements are available but the requirements of the Family Law Act must be strictly adhered to. This is dangerous territory. It is important to consult a Family Lawyer who understands the technical requirements.



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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