

Winter 2009

FAMILY LAW NEWSMATTERS

Welcome to the Winter 2009 Edition of our Newsletter.

In this newsletter we bring you:

- Parenting Orders and Breaches
- De Facto Relationships and Financial Agreements
- July School Holiday Suggestions



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 is located in Penrith. Additionally, we have facilities to see clients at the following locations:

- Sydney CBD
- Miranda
- Rockdale
- Katoomba

If you need some advice about your rights and responsibilities, call us on 1300 FAM LAW for a free telephone consultation.

Recently the Federal Attorney-General announced that the two concurrent court structures presently dealing with the bulk of all Family Law matters, namely the Family Court of Australia and the Federal Magistrates Court of Australia, would be merged into one Family Court of Australia.

The next step for all of us is to keep a good watch on how the merger will work in practise, and hopefully there will be an adoption of the "best of each system" in the merged model. One concern all of us should have is the issue of delays in the system.

If you have had me represent you, I may

well have given you some encouragement to write to your Federal Member of Parliament and raise the issue of funding for our Family Law system. There are still many cases experiencing significant delays- put simply we need more judicial resources ranging from Registrars to Judges.

If you have had an adverse experience with delays in the Family Law system, write to me at antonella@familylawmatters.com.au with your story, and I will collate all the responses in one approach to our Federal Member, David Bradbury MP.

Antonella



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TEAM NEWS

STAFF PROFILE: Zoe Ung



We take this opportunity to profile Zoe Ung, the newest addition to our team here at Family Law Matters. Zoe came on board to assist while Kate O'Grady, was off experiencing South America. We loved her so much, we asked her to stay!

Zoe attained her degrees in Law and Social Science with a double degree majoring in Sociology and Criminology in 2001.

Zoe was admitted as a Solicitor in 2002 and has dedicated herself to Family Law since 2003. Zoe has worked in the Penrith Area since focusing on Family Law.

On a more social note, Zoe has two lovely children aged 3 ½ years and 13 months and is still amazed at how such big personalities can fit into such little bodies.

In keeping with the sporty theme of our office Zoe was once a dedicated swimmer who competed at National Age Level. Zoe is looking forward to watching her children learn to swim and hopes that they too will one day enjoy being confident swimmers.

Welcome back, Kate!

Kate has finally returned. Next time you are in the office, don't forget to ask to see some of her favourite "happy snaps" from her holiday in South America. We loved hearing her stories!

JULY SCHOOL HOLIDAYS

There is often much debate amongst parents about how to calculate the half-way point in the school holidays.

According to the NSW Board of Studies website, the last day of Term 2 is Friday 10 July 2009 and the first day of Term 3 is Monday 27 July 2009.

Your child's school may have additional pupil-free days, you should always check start and conclusion dates with your school. If your children attend 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 11 July 2009 and finishes on and includes Sunday 26 July 2009 this gives a total of 16 days for this holiday.
- The half-way point, being day 8, is Saturday 18 July 2009.
- You may wish to discuss change-over to occur at about 5pm on Saturday 18 July 2009.

MOTHER'S DAY and FATHER'S DAY

Although Mother's Day has passed, Father's Day will approach very soon. This year, Father's Day falls on Sunday 6 September 2009. When negotiating parenting arrangements some parents forget about making special provision for these special occasions. Consequently, these special days can become a very stressful period for all involved.

Try and remember that Mother's Day and Father's Day is about making an enjoyable and memorable experience for the children – cold cups of tea and burnt toast presented to their parent as breakfast in bed is something most children remember with glee. These days should not turn out to be a tug-of-war about whose "day" it really is.

An example of an arrangement that could work for special occasions such as Mother's Day and Father's Day may be:

- The children spend Father's Day with their Father from 4:00pm on Saturday 5th July 2009 to 4:00pm on Father's Day Sunday 6th July 2009 and
- The children spend Mother's Day with their Mother from 4:00pm on Saturday 8th May 2010 to 4:00pm on Mother's Day Sunday 9th May 2010.
- The usual living arrangements then re-commence from 4:00pm on the Sunday, so that the parent usually spending the weekend with the children receives the children back into their care.

DON'T FORGET

Check your Orders for any school holiday and special day arrangements, and if in doubt, always contact us for some advice on the best way to ensure your compliance with your obligations.



PARENTING ORDERS AND BREACHES

Six months ago Orders were made that the two children of the marriage live with their father, John.

The Orders provide for the children to spend time with their mother, Susan, each alternate week from Thursday to Monday.

Unfortunately, the arrangement is not working. John refuses to comply with the Orders. Susan does not know what to do.

Susan seeks some legal advice from a Lawyer who is inexperienced in the area of Family Law. That Lawyer writes directly to John and receives a letter back from John's Solicitor. The letter simply says, "The children do not want to spend time with their mother. Consequently, it is reasonable that the children not comply with the Orders."

John's Lawyer has got it wrong. The children are aged 8 and 6. It is stating the obvious that children at this age do not make many major decisions about their welfare. They do not decide what school they go to; classes they attend; whether or not they go to the dentist or doctor. However, in this case it is seriously suggested that they have made a decision not to spend time with their mother. Surely this is nonsense.

Susan's Lawyer does not know what to do and Susan is completely frustrated.

Susan seeks a second opinion from a Family Law solicitor. "Is there anything we can do?"

The Lawyer immediately writes to John's Lawyer pointing out that John, not the children, is contravening the Orders and that the mother will make an application to the

Court unless this is rectified. The reply is, "The children have made their decision." Susan's Lawyer makes an immediate application to the Family Court for John to be dealt with on the contravention of the Orders.

Susan must detail each breach of the Orders. This is an important and demanding exercise. Susan's Lawyer carefully and meticulously prepares her case and the evidence upon which she will rely. (It is not sufficient to just front the Court and tell them how angry you are. This will result in the application being dismissed.)

There is a defence open to John that he had reasonable excuse to breach the Order. John's defence is the children did not want to go. The Court hears the evidence of Susan and assesses whether or not John's defence is acceptable. It makes a determination that John does not have a reasonable excuse for the contravention of the Orders. It is not reasonable to shift the responsibility onto the children. John is the parent and he has the responsibility to comply with the Orders.

John has acted irresponsibly and will be punished for doing so. He got very poor advice from his Lawyer and will pay the penalty.

Orders must be taken seriously both by the parents and the Lawyers. Specialist advice will save you from making a serious mistake. If you have genuine concern for the welfare of children, Orders can be changed by making an application. But, simply failing to comply with the orders is a serious mistake. If you have concerns about the children's welfare, seek some advice before taking matters into your own hands. Similarly, if you are being prevented from seeing your children, seek some advice before the situation gets out of hand.

OLD DE FACTO FINANCIAL AGREEMENTS

Financial Agreements as to how property is divided give security. The agreement is activated if the relationship breaks down.

There have been many enquiries as to whether agreements made prior to the Family Law Act applying to de facto couples are enforceable.

Bill and Barbara commenced living together in 1998.

Bill was a Hairdresser and ran his own business. Barbara was a Pharmacist. Barbara and Bill did not intend having children.

Barbara's Accountant suggested that Barbara and Bill enter into a Financial Agreement. An agreement was drawn up so that each party would retain the property they brought to the relationship and any property purchased together would be divided equally. They received legal advice from the same lawyer.

Barbara did not tell Bill she had a large superannuation entitlement. Bill had no superannuation entitlements.

A couple of years went by and Bill and Barbara had an unexpected child. Bill gave up his hairdressing business to look after the child. Barbara's pharmacy became very profitable. Barbara's superannuation entitlement grew substantially from the profits.

On 15 March 2009 Barbara and Bill separated. The Family Law Act now applies to their property matters.

Barbara digs out the old agreement and intends to rely upon it. Investment properties had been purchased in Barbara's name. Bill

had no superannuation entitlement and Barbara had a massive superannuation entitlement. Bill had given up his business to look after the child and was unable to return to his hairdressing trade.

The question is whether or not the old agreement made in 1998 between Bill and Barbara relating to financial matters is enforceable under the Family Law Act in 2009.

Old agreements may continue to be enforceable under the Family Law Act. However, those agreements need to be carefully examined:

- What were the circumstances of each party when the agreement was entered?
- Was there a full disclosure by each party of all material matters? (I think superannuation entitlements are very relevant).
- Did the parties receive independent legal advice?
- Since the agreement had been made, were there any changes in circumstances relating to the care of a child?

As you can see, Barbara will have difficulties enforcing the old agreement:

1. She didn't disclose her superannuation entitlement;
2. There was no independent advice;
3. A child had been born and Bill was the primary carer.

The common complaint about the Family Law Act applying to de facto couples is that the intent to lead independent financial lives has been ambushed. The answer is to enter into a binding financial agreement. If you intend to rely on an old financial agreement examine it carefully. It may need to be drafted again so you are left in no doubt the agreement complies with the provisions of the Family Law Act and is binding. Don't just leave it to chance. Remember, the agreement is only activated by the breakdown of the relationship. Identify the defect now. It can be remedied. It cannot be fixed in the moment of crisis. Contact us now to make an appointment for some advice about binding financial agreements.

NEWSFLASH... NEWSFLASH... NEWSFLASH...

Did you know there are new amendments to the Child Support regime commencing 1 July 2009 which will allow the Child Support Agency to automatically count salary-sacrificed superannuation contributions and net financial investment losses as part of the customer's child support income. If you have any queries about how these changes may affect your child support, please call us.

NEWSFLASH... NEWSFLASH... NEWSFLASH...



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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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