

KR HEWLETT & CO's
FAMILY RELATIONSHIPS NEWSLETTER
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to the first edition of our firm's *Family Relationships* Newsletter. **Welcome!** Please feel free to start reading at any part you like. All of Vanessa, Kim and Keith wish you well and hope you enjoy!

FAMILY LAW

Family law publications in other languages



 The Child Support Agency now has available on-line information for separated parents in Spanish, Turkish, Vietnamese, Chinese and Arabic (as well as English) according to its website (www.csa.gov.au).



In particular, the General Manager Matt Miller indicates that the *Me and My* series is available online in those five languages and comments that:-

“..the *Me and My* series are essential tools every parent should have in their tool kit for surviving separation.”

Enforcement of orders



As from 1 July 2006, a stricter set of laws apply if there is a breach of a family law order. The potential penalties are more serious and increase in seriousness, depending upon the extent of the breach.



Orders that could be made include compensatory time and parenting program attendance, but for more serious breaches they could be a large fine imposed, community service orders or even prison.

To balance the laws, there are also provisions which cover situations where there are multiple unfounded enforcement applications made to the court.



Finally, whether or not the court finds that a contravention allegation is unproven, it may even (presumably just on rare occasions) vary the previous main parenting orders made.



Financial disputes



Increasingly, in the last few years, a key word in family and de facto relationship financial dispute law has become “disclosure” - in summary, if a material matter has not been disclosed, it will leave that party vulnerable to adverse court findings, to an appeal or to an otherwise binding financial agreement being overturned.



Binding agreements



Having regard to the wide categories of persons (such as spouses, de facto spouses, same sex partners, carers or sometimes even boarders) who can now make claims on the assets of others, it is advisable, before moving in with any person, to consider whether you all should enter into a binding co-habitation, termination or financial agreement, especially if there are wide differences between your financial resources, earning capacities, needs or a likelihood of care or dependency.

“Binding” agreements when a marriage or de facto relationship ends

If a marriage or de facto relationship ends, a binding financial agreement (for marriage) or termination agreement (for de facto couples) can often be used to divide property as an alternative to court consent orders.

There are disadvantages in using such agreements however, as they are theoretically easier to overturn than court consent orders.

Previously, a significant tax disadvantage in using such agreements was that property transfers did not attract some capital gains tax rollover relief like family transfers pursuant to court consent or other orders generally do.



One piece of good news for 2007 is that, in using such agreements, transfers of property to the matrimonial or de facto spouse may well, provided certain criteria are met, now also attract *capital gains tax rollover relief*.

Capital gains tax rollover relief

As stated in the last article, capital gains tax rollover relief may now be more widely available in matrimonial or other relationship breakdown situations.



Even if you have court orders, I understand that it is still the case that transfers of property to children after relationship breakdown will currently still not qualify for capital gains tax rollover relief.



Also, capital gains tax rollover relief is only a *partial* answer to tax issues arising from matrimonial property breakdowns, and careful advice about tax implications about possible property division alternatives should be obtained before reaching agreement.



Recent family law reforms about children



Perhaps the most important thing to remember about the family law reforms last year, is that they introduce a usual presumption of equal shared parental *responsibility*, but not of equal *time*.

You may have read in a media that the new laws place more emphasis on the possibility of “shared parenting” - this is true, but it is my view that the new laws place an emphasis on consideration of such shared parenting as an important alternative, but they do not place an emphasis on it being the preferred alternative.

A family psychologist’s comments suggested such share parenting may be suitable for about 18% of cases. From reading published statistics of family law court orders made, orders may have previously been made for shared parenting in less than 15% of cases. This supports my current personal views that while such share parenting should be always considered as an important alternative, it would not be appropriate in many cases.

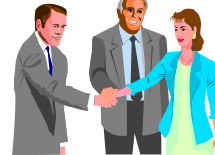
The new laws make clear that parents should consult on major long term issues in respect of the child including the child’s name, the child’s education, the child’s religion, the child’s health and in virtually all cases where the child is to live.



Under the new law, there are some changes in terminology – “reside” becomes “*live with*”, “contact” becomes “*spend time with*” while telephone and other indirect contact becomes “*communicate with*” ..


The introduction of Family Relationship Centres shall hopefully be a helpful innovation of the changed laws. These are places where people can obtain advice at an early stage.


They may also be able help not just spouses who suffer due to family breakdown, but other family members too.




Family Relationship Centres

It is understood that the first 15 Federal Government Family Relationship Centres have now commenced around Australia, including one at Penrith. There are about another 50 that are due to open, including one at Fairfield in the 2007/8 financial year I understand.


 The Centres aim to assist people at all stages of family relationships including couples about to be married, families wanting to improve their relationship, families having relationship difficulties, separated parents at various stages of separation and grandparents and another extended family members.

 They offer a family relationship advice line, phone 1800 050 321, available 8am to 8pm Monday to Friday and 10am to 4pm on Saturdays except national public holidays. Their website indicates that they also aim to be a community resource, like the local library

Child support legislation

 One of the most important aspects of recent family law reforms in my view are the proposed changes to the child support scheme. While some changes have been recently introduced, the most important changes are due to commence from about July 2008 when the child support formula is due to be changed (it is under review at the moment).

Recent media releases of the Child Support Agency have repeatedly referred to increased compliance checking.

 Recently, the Agency was looking to put on an additional 120 financial investigators to “focus on income minimizers”. The increased compliance activity was expected to yield an extra \$460million in child support payments and recovery of debts over the next 4 years.

WHAT ABOUT NON-MARITAL RELATIONSHIPS?



“Close personal relationships”

When the NSW legislation relating to de facto relationships was changed a few years ago, it recognized same sex de facto relationships.

The new laws also introduced a new category of relationship between adult persons where property rights could accrue - a “*close personal relationship*”.

The legislation indicates that the critical factors that must be present for such a relationship is that the two adults are “living together” and that “one or each of whom provides the other with *domestic support* and *personal care*.”

The case law indicating when there is or is not such a relationship is still not fully established in my view, and following comments are cautiously made based on case law comments to date.

A close personal relationship could be between family members, friends or others sharing accommodation. For example, an early case indicates a boarder in an elderly widow’s home could qualify.



Both domestic support and personal care must be provided. One of them alone is not sufficient.

Domestic support could include things like cooking, cleaning, washing, mowing the lawn, gardening and assisting with shopping.



Personal care would usually be more difficult to show. It could be indicated by assistance to mobility, personal hygiene and physical comfort. It could also include assisting with showering, bathing or dressing, assistance with diet, food preparation and taking of medicines or other requisites.

The domestic support and personal care would normally need to be provided personally. Also, the legislation says that it is not a close personal relationship if it is done for fee or reward (such as by a paid carer).



If a close personal relationship is established, it could create rights to claim against property of another while they are still alive or to challenge the other party’s will or estate after death....



To settle a claim for a close personal relationship by agreement while the two adults involved are still alive (similarly as for de facto relationships), a termination agreement complying with the legislation might be entered into, and property distributed in accordance with such an agreement may attract *stamp duty relief* and also now possibly capital gains tax rollover relief.



Alternatively, to settle a claim for a close personal relationship, court consent orders may be entered into, and such court orders may be less vulnerable to later reversal than a binding termination agreement.



Conclusions The changes to the law in this area will give rights to unpaid carers in some cases, but probably only those who regularly live most of each week with the other person. For rights to accrue while the other person is still alive, it will usually be necessary for the relationship to be of at least two years duration.



If a person lives live most of each week with you and personally cares for you without being paid by you, you should be aware that the other person maybe accruing rights and you should seek advice.

May you have seasons of salty relationships now and always

Keith Hewlett



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