

Hartley Family Law Services Newsletter

September 2001

hfls Welcome

Welcome to our September 2001 issue of 'Hartley Family Law Services News'. The purpose of this newsletter is to keep you informed of developments in family and defacto law, which may be of interest to you. We intend to publish this newsletter three to four times a year, keeping you up-to-date on the law and the services provided by Hartley Family Law Services. In this issue we cover new superannuation legislation passed by Parliament, the financial consequences of separation, and relocating interstate or overseas with children.

hfls Superannuation Legislation passed by Parliament

The Family Law Legislation Amendment (Superannuation) Bill 2001 was passed through the Senate in June this year. However, the new laws relating to the treatment of superannuation in the Family Court will not come into effect until towards the end of 2002, approximately 12 months after complementary amendments to the Regulations are made.

The new law will allow superannuation to be directly divided on a marriage breakdown. Divorcing couples will be able to do this by agreement, giving them flexibility to settle their own financial affairs or by obtaining a Court Order.

This new law enables superannuation to be treated and valued as property of the parties and for the Court to make direct orders dividing up a parties' superannuation entitlement.

This new law cures the inequity caused under previous legislation, whereby superannuation was not treated as property and remained with the spouse who had the policy whilst the other spouse received an adjustment out of available property.

The amendments to the Family Law Regulations and Superannuation Industry (Superannuation) Regulations will provide for the method of valuing a spouses superannuation interest and some other technical matters including the option for most funds of creating a new interest for a non member spouse instead of splitting future superannuation payments.

This 12 month delay from when the Regulations are passed until when the law comes into effect, is to enable the superannuation industry to gear up their information and administrative systems and for a range of educational activities to be undertaken on the reforms.

We will update you in future issues of our newsletter and also on our website as to when the Regulations come into effect, once more is known about how superannuation entitlements will be valued and divided between separating couples.

hfls In This Issue

Superannuation Legislation passed by Parliament

Financial Consequences of Separation – 6 Important Facts to Know

Relocating Interstate or Overseas with Children



Brett Hartley

*Hartley Family Law Services Newsletter***Financial Consequences of Separation – 6 Important Facts to Know**

We often come across situations where separating couples are not aware of important rights and financial consequences upon separation or have been given incorrect advice about certain matters. Therefore, we thought it helpful to highlight what we consider to be six of the most important facts that impact financially upon the breakdown of a relationship.

Fact 1:

Financial matters or property settlement are able to be resolved immediately after spouses separate. There is no law in Australia that says spouses have to be separated for a certain period of time before they can resolve property issues pertaining to ownership of property.

Fact 2:

In most cases it is in the interest of spouses to finalise their property settlement as soon as possible after separation. It is a common misunderstanding that the assets you have at separation are the only assets taken into account by a Court in determining property settlement. As highlighted in our second newsletter (March 2001 addition) the Court will look at all current assets and will not be confined to solely consider those assets that were in existence at separation.

Fact 3:

Separating couples should be encouraged to resolve their property settlement amicably with their former spouse, but the resolution of the property matter must be done in a proper and legally binding manner. This can only be achieved through a Court Order at the end of a contested Trial, a Consent Order lodged and approved in Court or a Binding Financial Agreement.

Fact 4:

Seek advice and take advantage of Stamp Duty and Capital Gains Tax Relief, which may be available in finalising the property settlement.

Fact 5:

Upon separation, spouses should immediately review their Wills, any existing Power of Attorneys and beneficiaries under superannuation policies.

Fact 6:

Spouses are unable to apply for a divorce until they have been separated and have lived separately and apart for a period of at least 12 months. It is important to remember that after a divorce is obtained by one of the spouses then either spouse only has a further period of 12 months from the date of the divorce to resolve their property settlement or spousal maintenance and/or institute proceedings in the Family Court.

Relocating Interstate or Overseas with Children

It is important to remember that neither parent has a unilateral right (even the primary resident parent) to relocate interstate or overseas with a child without first informing the other parent and attempting to come to an agreement with that parent concerning the proposed relocation.

If an agreement cannot be reached about the relocation, the parent wishing to relocate with the child should seek immediate legal advice and make any necessary application to Court seeking permission from the Court to relocate interstate or overseas with the child.

In cases where one parent decides without warning to relocate to another state or overseas, then such actions will almost always result in the child being returned to the other parent urgently

before a final decision is made by the Court on where the child should live.

If disputes concerning relocation proceed to a Court Hearing, the Court will examine what is in the best interest of the child and the particular circumstances of the case and will consider all of the factors that it normally considers in a competing residency claim for a child.

The attachments of the child to each parent and in particular, whether the relationship between a child and the parent would be significantly affected because of the distance of separation can be one of a number of significant factors considered by a Court in such cases.

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