

Divorce or Separation: what happens to the family home?

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If you are separating from your partner one of the first concerns will be where the family will live. As a divorce lawyer at Hopkin Murray Beskine www.hmbsolicitors.co.uk this is something I advise about frequently. It is especially worrying if all the property or finances is in the name of one partner.

Your rights vary depending on whether you are married or not. In a divorce, assets (property, pensions, capital, tenancies and more) go in the “matrimonial pot” and decisions are made about how it should be distributed. The general approach is to try and reach a position of equality by considering all relevant factors including your contributions to the marriage. If equality is not possible, then needs are prioritised particularly needs of the children.

However, this process can take a long time. What do you do if your spouse, who owns the property, decides that it is time that you left - with or without the children? As a married person you have rights to live in the family home and you cannot be excluded without the court’s agreement. You can protect these rights by a court order, until the court examines in more detail what should happen in the longer term.

If you are not married you can still ask the court to protect your position in the family home. If it is not tenable for you both to stay in the same property, the court will assess who should stay: who has the greatest need.

This means whether or not you own the

property, you cannot just change the locks to make the other person leave, even if their behaviour might mean you need them to leave for your own safety or your children’s. If they agree to leave that is a different matter. Otherwise you can ask the court to make a ruling about who lives there in the immediate future. Longer term arrangements can then be dealt with during the divorce when the assets will be available for re-distribution between the spouses.

If you are unmarried you can still make applications against property, but the position is very different and the rights harder to establish. This area of law is very complex. You can still ask the court to sell, or transfer a share of the property to you, certainly if it is jointly owned. If it is owned entirely by your partner you can still establish a share but only in certain circumstances. If you have care of a child, you can ask for financial assistance for housing whilst your child is under 18, which is likely to be transferred back to your partner when your child reaches 18.

This whole area of law is quite fast changing and if you have any queries about this or any of my other editorials, all of which can be seen at www.hmbsolicitors.co.uk please feel free to email me at sb@hmbsolicitors.co.uk.

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