



My partner and I separated – but they won't leave the house!

We speak to local family lawyer and founder of Reid Family Lawyers about one of the most asked questions in family law: When going through the long process of separating your property, who gets to live in the house?

Fiona says “there’s nothing more frustrating. You and your partner have gone through the emotional, distressing decision to separate. You ask them to move out, and... they refuse. Suddenly you’re stuck under the same roof in a total stalemate”.

It seems that sometimes the answer to who gets to stay in the house isn’t that clear.

Fiona says, you can’t force your ex to leave the house without some kind of Court order – either an AVO or an Order from the Federal Circuit and Family Court of Australia for “sole or exclusive occupation”.

When considering a sole occupation Application, the Court says that it comes down to the ‘balance of convenience’. Is it more convenient for you to stay in the house? Or your ex? The most important part of this decision is going to be the kids. We want as little change for them as possible. That means that usually, the person who gets to stay in the house will be their primary carer – at least until the final property agreement is reached.

If you don’t have kids, then the Court considers things such as your respective

incomes (going to your capacity to maintain rental accommodation elsewhere), whether there is other accommodation available to either of you – eg staying with family or moving to an investment property and, importantly, whether you derive an income from or work from your home and whether the set up can be easily moved elsewhere.

Courts are reluctant to throw people out of their houses. So, if it’s just uncomfortable for you to remain separated under one roof it is quite possible that you and your ex will need to share the same space

until you reach a property settlement – either by agreement or by Court determination.

If you’re stuck with being separated under one roof, here are some tips for making it work:

- Be courteous. Respect each other’s space. Move into separate bedrooms if that’s an option;
- Try to work out some parenting arrangements whereby you each have specific days and times when you take on the primary care of the children. This will make the transition for your kids easier following your physical separation.



- Don’t bring new partners into the home;
- Try to agree on sharing expenses – not only the big ones but small ones such as groceries too. If you finish the last of the milk, replace it!
- Try not to argue in front of your kids or even when they’re in the house. Kids can cope with your separation, but not ongoing conflict.

Many lawyers recommend to their clients that they not leave the family home until a property settlement has been achieved. The reasons for this advice are good ones and include:

- Delays in the family courts mean you might be waiting up to two years for a final decision on your matter. This is a long time to be paying rent in addition to your share of mortgage instalments and other expenses to maintain the home.
- If your ex continues to maintain the family home alone, this could be seen by the courts as a post-separation contribution on their part, thereby increasing their entitlement to the net asset pool at the end of the day;
- Kids, especially older children, are inclined to do what best suits them. Being able to remain in their home with all the convenience that provides, may have an impact on their views about their living arrangements;
- As soon as you leave the house, it becomes more convenient for your partner to stay. You lose some bargaining power if you’ve left the family home, especially if the costs of remaining in the home (eg mortgage instalments, utilities etc) are less than what your ex would be paying if they were renting elsewhere. It’s sometimes hard to bring someone to the negotiating table when they know, due to delays in Court, that they may have the benefit of remaining in the home for up to 2 years.

But, Reid says, if you are living in an emotionally, physically, or psychologically abusive household, you should leave as soon as it is safe to do so. **The most important thing is your safety (and that of your children), always. If this applies to you:**

- Seek some advice from a Domestic Violence Liaison Officer at your local police station, or a domestic violence counsellor about the avenues available to you.
- Try to stockpile some funds – enough to pay bond and rent/ living expenses for a few weeks. If this is not possible, enquire with local shelters who may be able to provide accommodation for you and your children in the first few weeks of your separation.
- Plan your escape – engage the help of family and friends and even the police.
- Most importantly, take the kids with you when you go. There

is nothing preventing you from moving with your children out of the family home. There is also no obligation to provide your address to your ex after you move.

- Maintaining the children’s relationship with your ex after you separate is important, but only if it’s safe for your children. Enquire about supervision services which may be able to assist if your ex poses a danger to your children.
- Speak to a lawyer. They can advise you about how you may be able to return to the home once it’s safe for you to do so and what arrangements you can make for your children to continue their relationship with your ex in a safe way until things are sorted. Your lawyer can also represent you throughout the negotiation process to minimise the impact of the power imbalance between you and your ex in your discussions.



Fiona Reid is the Managing Director of Reid Family Lawyers, a boutique specialist family law firm with offices in Brookvale and Surry Hills. She is supported by a team of expert family lawyers. The firm has a wealth of experience in all facets of family law including complex property matters, parenting matters, child support and spousal maintenance issues, relocation, de facto and same sex issues, surrogacy and adoption.

FREE 20 Minute Consultation

Fiona is offering a FREE 20 minute consultation to prospective clients who mention this article when they make an appointment for their initial conference. Call Fiona on **9091 0221** or email fiona@reidfamilylawyers.com.au.

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