



Advice from Alan

The home post-separation

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Who gets to occupy the family home after a separation can

often be a difficult issue to resolve. It can be a very emotional time and one or both partners may not be acting rationally or reasonably because of the circumstances. Informal agreement can be reached, but whether this is possible will depend on the circumstances and on what is being agreed on. An informal agreement can only deal with occupation and payments, not ownership of the home. Ownership issues must be in a written relationship property agreement, following both parties receiving independent legal advice.

Often both partners will be listed as owners on the title or as tenants on the rental agreement. After separation, both owners or tenants of a home still have the right to live in it. If you want exclusive occupation of the family home, you will need an order from the Family Court. The Court has the discretion to allow either partner to occupy the home or any other premises that is relationship property, how long that will be for, and who will pay

for things like the mortgage or rent and maintenance. They can also order the partner in the home to pay rent to occupy it.

The needs of any children are taken into account when deciding who can live in the family home. Factors to be considered can include which parent looks after the children for most of the time, and where the children go to school. If the school is close to the home, that can be an important factor. The Court will look at what is fair and just in each particular situation. They can also decide who gets to use the family furniture and appliances in the meantime.

The Court can also make occupation orders to protect one partner and children from abuse even if there has been no separation. Protection and occupation orders can be made quite quickly under the Domestic Violence Act, sometimes even on the day the application is filed if it is urgent. This can also be done without serving the other partner with the application in urgent cases. A temporary order can be made with a full hearing later.