

Conversations



Occupation of the family home

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LEGAL MATTERS



When a couple separate, who is entitled to occupy the family home?

Anybody who owns a property, or is listed as a tenant in a tenancy agreement, generally has a legal right to occupy that property.

Often a couple will own the family home in joint names, but may not agree on who should remain living there after separation and before settlement of their relationship property issues.

It is important to know that the law provides mechanisms for obtaining exclusive occupation in certain circumstances, and that this is possible even where the person seeking occupation is not an owner or tenant.

The Property (Relationships) Act 1976 gives the court the discretion to grant an order

allowing either spouse or partner the right to exclusively occupy the family home, or any other premises forming part of the relationship property.

This can be for as long, and on such terms and conditions, as the court thinks fit.

The accommodation needs of any children are relevant when the court is deciding whether to make an order, and they will look at what is just and fair in the particular circumstances of the case.

If occupation is necessary for protection of a partner or their children from domestic violence, then it will likely be quicker and more appropriate to seek occupation or tenancy orders alongside a protection order under the Domestic Violence Act 1995.

MAINTENANCE PAYMENTS TO FORMER PARTNERS

John asks "Can I be ordered to pay maintenance to my partner if we've only been together for less than three years?"

The short answer is "Yes".



This had been confirmed by both the Family Court and on appeal to the High Court.

In the case, a couple separated after being in a de facto relationship for one year.

They previously dated for a year some time before.

The female partner applied to the Family Court for a maintenance order, and was granted over \$1800 per week to pay for her rent and other expenses.

The paying partner appealed to the High Court.

That court held that the Family Court had made no error in deciding to make the interim maintenance order, even though the relationship was one of less than three years.

The High Court noted that the Family Court has a broad discretion to make maintenance orders, and had correctly undertaken a factual enquiry and properly concluded that the payment would not subject the paying partner to any financial hardship.

The court will take into account when determining whether you have a de facto relationship:

- The nature and extent of common residence (living at the one residence is just one factor – it is possible to be in a de facto relationship even though you are living at different addresses);
- Whether or not a sexual relationship exists;
- The degree of financial

dependence or interdependence, and any arrangements for financial support;

- The ownership, use, and acquisition of property;
 - The degree of mutual commitment to a shared life;
 - The care and support of children;
 - The performance of household duties; and
 - The reputation and public aspects of your relationship.
- The court will then decide whether or not a maintenance order is appropriate.

The court must first find the party seeking maintenance is unable to meet their own reasonable needs.

The court will then go on to decide whether that inability to meet their own needs is based on one of the range of factors contained in the act.

So if the court determines that you have been in a de facto relationship, it can also order a party to pay maintenance to the other partner upon separation in certain circumstances.

■ Column courtesy of RAINEY COLLINS LAWYERS phone 0800 733 484 or visit www.raineycollins.co.nz. If you have a legal inquiry you would like discussed in this column please email Alan on aknowsley@raineycollins.co.nz.

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