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Who occupies the home after separation?

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LEGAL MATTERS



Occupation of the family home can be a difficult issue when a couple separate. Often a couple will jointly own the family home, or both be listed on the tenancy agreement. After a separation, the parties may disagree about who should have the right to live in the family home while the relationship property is being sorted out. If agreement can be reached on occupation then the couple can do this informally or enter into a

formal agreement. Whether you need a formal agreement will depend on the circumstances and what is being agreed. You can informally agree on occupation of the home, but you cannot make a legally binding agreement on who will own the property unless a formal relationship property agreement is signed after both parties have received independent legal advice from a lawyer. So if agreement cannot be reached, who is entitled to occupy the family home? Generally, both of the owners or tenants will automatically have a right to occupy the home. To exclude an owner or tenant, it is usually necessary to obtain an occupation order, or tenancy

order from the court. The Property (Relationships) Act 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. The court can also decide how long the order will last, and what other terms or conditions will apply. This might also cover who pays towards the rent or mortgage or one party paying rent to the other for occupying the home. The accommodation needs of any children are relevant when the court is deciding whether to make an order, and the court will look at what is just and fair in the particular circumstances of the

case. For example, if one parent has most of the care of the children and the home is located near the children's school then that can be taken into account in deciding who should occupy the home. It is also possible for the court to make a furniture order dealing with the use of household furniture and appliances. The law also provides mechanisms for obtaining exclusive occupation even where the person seeking occupation is not an owner or tenant. This usually arises where the house is owned by a Family Trust. If exclusive occupation of the family home is necessary for protection of a partner or their children from abuse (even if there

is no separation), then it will likely be quicker and more appropriate to seek occupation or tenancy orders alongside a protection order under the Domestic Violence Act. It may be possible to apply for such an order urgently and without notice to the other party. Often a temporary decision can be made by the court on the day the application is lodged. **Column courtesy of RAINEY COLLINS LAWYERS phone 0800 733 484 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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