

How to Kick out your Spouse (and Keep the House to Yourself)

One of the types of “interim relief” (remedies available to you) during the pendency of your divorce is that of exclusive possession of the marital residence. The relevant Pennsylvania section of the divorce code states as follows: “[t]he court may award, during the pendency of the action or otherwise, to one or both of the parties the right to reside in the marital residence” 23 Pa. C.S.A. Section 3502(c).

The first case in Pennsylvania which dealt with the issue of exclusive possession of the marital residence was Laczkowski v. Laczkowski, 496 A.2d 56 (1985). In this case, the court upheld the wife’s request for exclusive possession of the marital residence for herself and her minor child. The court cited the policy of the Commonwealth of Pennsylvania that the family is the basic unit in society and the protection and preservation of the family is of paramount public concern. In the context of divorce, the courts are to give primary consideration to the welfare of the family rather than the vindication of private rights or the punishment of matrimonial wrongs. The courts also should mitigate the harm to the spouses and their children caused by the legal dissolution of the marriage. It was for these policy reasons that the court in the Laczkowski case upheld the wife’s request for exclusive possession of the marital residence.

The more recent Pennsylvania case which dealt with the issue of exclusive possession of the marital residence is Chappell v. Chappell, 81 Pa. D. & C. 4th 235 (2007). In this case, the court awarded the wife the exclusive possession of the marital home even after she had vacated the home when the parties separated. The court noted that the factual situation in this case was similar to that in the Laczkowski case: in both cases there was a minor child residing with the spouse requesting temporary possession of the marital property. As made clear in the Chappell case, the intent of the remedy of exclusive possession of the marital residence is to give special attention to the needs of minor children to continue to live in a familiar environment and to avoid uprooting the children from the home, school, social and community settings upon which they are dependent.

Keep in mind that the exclusion of a spouse from the marital home during the pendency of a divorce is considered a harsh remedy that will not be awarded easily, and the need for such an award must be clearly evident in the facts of each case.

If you have any questions regarding divorce issues, please contact me for a free consultation at 1-877-LAW-2555.

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