

Temporary Exclusive Possession of the Marital Residence in Divorce

One of the measures that may be put into place during a divorce proceeding is an order awarding temporary exclusive possession of the parties' marital residence to one of the spouses. Such an order is typically viewed as a harsh remedy and is only to be used when there is evidence of serious misconduct or abuse.

In most states, the spouse asking to have temporary sole possession of the family home will need to demonstrate that the other spouse's behavior is harmful to the other occupants of the home. Such proof can consist of evidence of violence, drug abuse, or alcohol abuse; the criteria differ from state to state. For example, the fact that one of the spouses previously sought court protection against violence may factor into an order awarding temporary sole possession. Although individual violent incidents may not be sufficient to justify the exclusion of one spouse from the family home, if it appears that such events have happened frequently or are likely to be repeated in the future, courts have been persuaded to issue an order awarding temporary possession.

With respect to drug or alcohol abuse, awards of temporary sole possession have been granted when there has been evidence of frequent intoxication coupled with physical and/or verbal abuse. Additionally, even when violence does not accompany substance abuse, an award of sole possession may be granted in the face of proof of the significant psychological impact of spouse's drug/alcohol abuse on the other occupants of the home.

In some states, proof of constant bickering, and the resulting strife and turmoil that it causes on the parties' children, can create the requisite emotional and psychological harm that justifies an order awarding temporary exclusive possession. Finally, in a few states, immediate, temporary possession of the family home has been awarded to one of the parties – even when the level of misconduct would not warrant temporary relief – when the courts have been persuaded that the marriage will be dissolved soon.