



Marriage Breakdown – Can I have exclusive occupation of the former matrimonial home?

If your relationship has broken down and your partner is refusing to leave the matrimonial home or is insisting you do, the Family Court in certain circumstances can make an order giving you exclusive occupation of the matrimonial home.

Section 114 of the Family Law Act gives the Court power to “make such order or grant such injunctions as it considers proper”, including an injunction restraining a party to the marriage from entering or remaining in the matrimonial home, and an injunction relating to the use or occupancy of the matrimonial home.

A Court may be willing to make interim orders that:

- you have exclusive use and occupation of the matrimonial home;
- your former partner is restrained from entering, approaching or doing any act which interferes with your use and occupation of the matrimonial home;
- your former partner leave the property in good condition and order.

There is no fixed list of criteria that must be established in order to obtain an order for exclusive use and occupation. Each case is determined on its facts. However, matters considered by the Court include:

- the means and needs of the parties;
- the needs of the children;
- hardship to either party, or to the children;
- where relevant, conduct of one party which may justify the other party in leaving the matrimonial home, or in asking for the expulsion of the other party from the matrimonial home.

Although hardship may be involved for the party required to vacate and the party seeking the order for sole use and occupation may have the financial capacity to rent alternative accommodation, a Court may still be willing to make an order pending a final property settlement. This may be particularly so where:

- children are in fear for their safety and the safety of the party seeking the order if they continue to live with the party who is being required to vacate the matrimonial home;
- the party seeking the order must arrange for the children’s accommodation;
- the party seeking the order has been conducting a business from the matrimonial home; and
- it is largely the conduct of the party being required to vacate the matrimonial home that has caused the other party and the children to vacate that home.



If your relationship has broken down and you need assistance or advice or simply to find out where you stand, please contact one of our experienced family Lawyers Oliver Hagen or Ken Gray on 02 4731 5899 or email us at familylaw@batemanbattersby.com.au.