

December 21, 2010

Divorce, Hostile Shared Residence and Domestic Violence

One of the biggest sources of contention early on in a New Mexico divorce action is which party is going to leave the parties' marital home.

In New Mexico, a temporary domestic order is entered at the beginning of divorce which prevents either party from forcing the other to leave their shared residence. If both parties refuse to move out, then the court will have to enter an order determining who can stay and who must leave. This is not an easy issue in light of New Mexico's community property laws.

It may seem reasonable to just let the court decide who stays and who goes. In reality, it can take months, often many months, to get a hearing before the court on this issue. In the meantime, there are two people who are most likely not getting along very well attempting to live under the same roof.

While neither party may want to leave because they fear giving up a claim to the residence, the parties should also consider other damage that can occur when people who are arguing are forced to live together. This includes acts of domestic violence and sometimes false allegations of domestic violence.

Domestic violence can result in horrible physical and mental harm, and even in death. Domestic violence is a very serious problem and it is taken very seriously by law enforcement. In fact, law enforcement officers face some of their most serious officer safety issues in domestic violence situations. This accounts for the inevitable and sometimes seemingly illogical arrest of one of the parties on every domestic violence call.

A conviction for domestic violence or even an entry of an order of protection can result in permanent and irreparable damage to the alleged abuser. These include consequences for gun ownership or possession, employment, security clearance, property rental and immigration status among others.

These dour consequences result on a conviction or finding of guilt. Many times, it is the alleged victim's word against the alleged abuser. Is it really worth the risk in either case? The house is not worth a lifetime of disadvantage resulting from a finding of domestic violence.

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Any sensible person faced with a choice of leaving the house, loss of pride, financial concerns or the like as opposed to a possible domestic violence situation should think seriously about moving on.

False allegations of domestic violence are hard to swallow for the alleged abuser. A true act of domestic violence is completely unacceptable and intolerable for the victim, law enforcement and the courts. Either way, living in a hostile home environment in the midst of divorce is truly flirting with disaster.

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