

ALBUQUERQUE DIVORCE LAWYER BLOG

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The Marital Home is Often Ground Zero in Divorce

The beginning of a divorce can be very confusing and stressful. Perhaps the most stressful part of the divorce is what to do with the marital home. A difficult decision must be made as to who will remain in the house. This decision is made even more difficult when children are present.

As community property, both parties are equally entitled to possession of the home. As such, neither party can force the other party to move out without a court order. Many times, both parties are very reluctant to move out of the home for a number of reasons including costs, disruption, attachment and stress.

The issue of possession of the home is fraught with emotion since whoever vacates the home will likely not be allowed to return while the divorce is pending. Moreover, whoever keeps the home will often also have primary custody of the children since the courts favor the least disruption possible to the lives of the children.

Due to many attachments to the home and the real and perceived advantages of staying in the home, parties will often jockey for possession of the home. The most common tactic is simply to demand that the other party leave. Of course, this demand has no basis in law and is unenforceable in the absence of a court order.

Getting a court order to force the removal of one or the other parties is not all that easy. There must be grounds for removal and the mere fact that his or her presence is no longer desired is not enough. The court can and will under some circumstances order one party from the home. However, this decision is not taken lightly by the courts and likewise should not be taken lightly by a party seeking removal of a spouse from the home.

The issue of the community residence can cause a huge level of hostility and set a divorce off in an irreversible course of conflict. It should be addressed in the most rational and thoughtful way possible and compromise is highly encouraged. Refusal to

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compromise here will likely costs the parties dearly in every other areas of the divorce, no matter how trivial.

Due to the complexity of the issue and the possibility of derailing an otherwise civil divorce, it is important to consult with an experienced divorce and family law attorney to understand your rights, obligations and corresponding options in addressing this issue.

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