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OCCUPATION RENTAL ON SEPARATION

Invariably on separation one party remains in occupation of the family home until such time as the parties enter into a Relationship Property Agreement dividing their property. Where there are multiple issues involved this could take some considerable time and the question has to be asked whether the party in occupation should pay rental for the use and benefit of the other parties half share in the family home?

Take the position of Peter and Sue. Upon separation Peter decided that it would be simpler, in order to minimise any conflict with Sue that he would rent an apartment in the city. Sue continued to occupy the family home.

For whatever reason and because of the animosity between the two of them it took two years to resolve all issues between them. Peter was of a view that as he was paying rent and Sue continued in occupation of the family home without any payment that he was at a disadvantage. Peter therefore put the issue to his lawyer?

Under the Property Relationships Act 1976 ("the Act") all relationship property is itemised as at separation date and divided at "hearing date" (i.e. current day). The Court retains a discretion under s2G of the Act to depart from the "hearing date" requirement in order to arrive at a just and fair result keeping in mind the main principle of the Act that all property be divided equally.

If Peter wasn't compensated for paying rent to a landlord during the two year hiatus until agreement as to division was reached while Sue had the benefit of occupation of the family home then this could result an unequal division.

The Court is then likely to use its discretion in order to equalise the situation. The Court in some cases have ordered Sue to recompense Peter for half the rental he paid in order to place the parties in an equal position.

Depending on the circumstances it may be that a market rent is accessed for the family home and Sue would be ordered to pay 50% of the market rent for the benefit of occupation of Peters half share of the family home.

It is important to emphasise that the Court retains a discretion in every individual case. There may be other dynamics at play e.g. Peter may be receiving the benefit of income from a share portfolio that Sue did not receive. In those circumstances the Court may decline to use this discretion to order occupational rental. So it really does depend on the circumstances in each individual case. There is no black and white rule.

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