

INFO CURRENT AS OF OCTOBER 2001

## DISTRIBUTION OF PROPERTY BETWEEN UNMARRIED COUPLES

*This column is published in conjunction with the New Hampshire Bar Association as a public service. It is not presented as specific advice, which may only be provided by an attorney based upon each individual situation. If you need a referral to an attorney, the NHBA Lawyer Referral Service is available to assist you. Call 229-0002 or visit our website at [www.nhbar.org](http://www.nhbar.org) for more information.*

**QUESTION:** My ex-boyfriend and I recently separated after a 6-year relationship. I have a restraining order against him. I was given use of our home, as both our names are on the deed. I would like to stay in the home, have him remove his personal belongings, and have his name taken off the deed. Because I have the restraining order against him, do I have to remove his personal belongings or can he come get them? Also, I don't think he will be willing to sell his interest in the home to me. How can I resolve this?

**ANSWER:** You raise an interesting issue about property rights between unmarried individuals. It is very fortunate that your name is on the deed indicating that you have an ownership interest in the property. Often we run into cases where only one name is on the deed, but both parties have been living together for quite some time, like you have. In those cases, the courts tend to lean toward giving the property to the owner named on the deed.

The domestic violence statute under which you received your restraining order tries to recognize that the property should not always go to the owner named on the deed. The legislature recognized that in some relationships there is an imbalance of power and the abuser may tend to control the finances in the relationship in order to control the victim. In determining who gets to stay in the home, the Court must look at the totality of the circumstances. The first question the court should ask is who is named on the deed. If only one person is named on the deed, then the Court should ask who pays the mortgage on the premises. If one party is on the deed and exclusively pays for the property, then that person will in most cases be given use and possession of that property. However, if the victim would be rendered homeless and can prove that the financial circumstances were due to abuse, power and control, then the victim may request to be given a reasonable amount of time to find other living arrangements. It is within the discretion of the Court to make an order that will protect the domestic violence victim.

The scenario changes completely, however, if the parties have children together and the person who owns the property has a duty to support the children. In that case, because the courts do not like to uproot children from their homes, the non-owner of the property may be awarded use of the home.

A domestic violence order will only last for one year. If circumstances change during the year, the order may be modified. It is important to keep in mind that these orders are only temporary and further proceedings may be necessary to resolve the issue of who ultimately gets the property.

In your situation, because both parties were named on the deed, you were awarded use of the house because your partner abused you. I assume that you have been paying either the entire mortgage or a portion of it. Whether you will be able to stay in the home permanently depends, first, upon whether your ex-boyfriend will be willing to sell his interest in the home to you. If, as you suspect, he is not going to be willing to sell his interest in the home to you, you will need to file a separate action called a Petition to Partition in the probate court in the county where the property is located. That court will determine how the real estate is to be divided, taking into consideration how much each party contributed toward the purchase price and maintenance expenses. It is important to provide documentation to the court of financial contribution and any labor and materials you may have contributed to the real estate. Ideally, parties who purchase a home together have reached an agreement regarding each party's responsibility toward the financing and upkeep of the property. People who are unmarried and do not intend to get married, should put those agreements in writing. It is then easier to resolve the disposition of the property when the relationship ends. Sometimes, when parties cannot agree to how the property is to be divided, it is easier to just sell the house and divide the proceeds rather than go to court to resolve the issue.

Your next question involves the removal of your ex-boyfriend's personal belongings. Because you have a restraining order, he is not permitted to enter the home. The Domestic Violence Final Order permits him to retrieve toiletries, medication, clothing, business equipment and any other item as determined by the court. He is required to have a police escort when he comes to the house. The police are required to give you reasonable notice as to when he wants to retrieve his belongings. Since the police will be with him, you are entitled to stay and monitor what he takes. He can take anything that the court has permitted him to take or that you allow him to take. If there is a dispute, you should refrain from having any discussion with him about it, just tell the police officer that he cannot take it. If it is not on the Final Order, he cannot take it. He may not speak with you while he is in the house, even if there is a police officer present. If he does try to speak with you, he should be arrested on the spot for violating the restraining order, which prohibits him from having any contact with you. Hopefully there will not be a dispute over the disposition of the personal property. If there is, you can seek assistance from the court in which you obtained your restraining order to help resolve the issue.

October is Domestic Violence Awareness Month. The bottom line is no one deserves to be abused. No one has the right to assert unfettered power and control over anyone else. The person asserting power and control must be held accountable. If you are a victim or a survivor of abuse you have the right to live a life free from abuse. The first step in gaining freedom is to obtain a restraining order and to seek help from professionals who are equipped to give you assistance or help find resources to ensure your continued freedom. You are not alone anymore.

To obtain the location of any domestic violence crisis center anywhere in the United States, you may call the National Domestic Violence Hotline at 1-800-799-SAFE (7233) or 1-800-787-3224 (TDD). For more information about New Hampshire crisis centers go

to the New Hampshire Coalition Against Domestic & Sexual Violence web page at [www.nhcadsv.org](http://www.nhcadsv.org).

Answered by *Attorney Susannah Colt*

Director of the Domestic Violence Advocacy Project, NH Legal Assistance

