

Legal and Practical Considerations Before Leaving the Marital Home During Divorce

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One of the most common and emotionally charged questions people ask when facing divorce is, “Can —or should— I move out of the marital home before we have an agreement or court order?” The answer isn’t always straightforward. Moving out can have practical, financial, and legal consequences, especially if there are minor children or disputes over property.

In most cases, there is no absolute legal requirement to remain in the marital home until an agreement or court order is reached. Adults generally have the right to decide where they live. However, if children are involved leaving without a plan or without understanding the implications may affect custody and parenting time. Courts tend to look at the status quo when making temporary custody decisions. If you move out and the children stay with your spouse, that could set a pattern. In some jurisdictions, one party can ask the court to award temporary exclusive use and possession of the home, especially if children are living there. Moving out doesn’t forfeit your ownership interest, but it can complicate practical issues such as access to documents, personal items, or the ability to oversee the property’s condition.

If there is domestic violence, threats, or a toxic environment that affects your safety or your children’s safety, moving out may be necessary. In such cases, you should document the reasons why you left and consider seeking a protective order or temporary custody order to clarify parenting arrangements and protect your rights. Your well-being and your children’s well-being always come first.

If you have minor children, think carefully. Moving out without taking the children can unintentionally signal to the court that your spouse is the primary caretaker. Moving out with the children without agreement or court order may escalate conflict and may be seen as improper “self-help.” The best approach before moving is to try to reach a temporary written parenting agreement or seek a temporary custody order.

Even if you move out, you may still be responsible for paying the mortgage or part of it, contributing to household expenses, and maintaining utilities or insurance. Leaving can also mean taking on the cost of a second household, which may be unsustainable during a pending divorce.

If, after weighing these factors, you decide it’s best to move out, you should consult a lawyer and obtain advice, based on your jurisdiction and the specifics of your case. Document your property by making a list —and taking photos— of furniture, valuables, and documents. Secure important records like tax returns, bank statements, insurance documents, passports (take copies so you’re not left without them). Attempt to reach a temporary agreement with your spouse on issues including parenting time, bill payment, and use of property.

If you and your spouse can’t agree, you may file a motion for pendente lite (temporary) relief. In such a hearing, the court can decide who stays in the home, who pays certain bills, and sets a temporary custody schedule. These temporary orders

maintain stability until the divorce is finalized.