



HOW TO GET
HER OUT
AND KEEP THE

HOUSE



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NORTH ALABAMA'S FAMILY LAW TEAM



If you are going through a divorce or you expect to be going through a divorce, one of the most common priorities for men is getting your wife out of the house now. Sharing space with someone you are looking to divorce can be awful. Your home is supposed to be a sanctuary of peace, but the tension that can result from sharing space with your soon-to-be ex can make you feel like you are walking on eggshells. I once had a client who told me he literally locked himself in his room each night to avoid the violent outbursts and constant harassment. His top priority, and that of many men, was to get his wife OUT and maximize his chances of keeping the house in the divorce.



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DETERMINE WHY YOU WANT TO KEEP THE HOUSE

There are a lot of reasons that men may want to keep the house. Most often, especially when there are children, the reason is stability. Many dads understand the turmoil that a divorce can have on children and they want to minimize the number of changes their children face by keeping them in their home. At least this way they have the same bedroom, the same neighbors, and the kids are less likely to need to change schools. Many men also have support from nearby neighbors and established routines for school or extracurricular activities. Another issue surrounding the home is related to actual custody schedule. If dad moves out, he will likely not be able to afford to rent or buy a home as large as the marital home. Many men worry that if they move out into a one or two bedroom apartment that the children may not have the space they need, or it won't be practical to have as much time with them as she would like. Especially if the kids are teens, the last thing they are going to want to do is move from their home, near their friends and activities to be around a parent in a little apartment.

The status quo matters! Your established schedule with the children and monthly expenses will form the beginning for the analysis of both a child custody schedule and how much you may be awarded for alimony. With that in mind, this article will help you get him out and keep the house.

HOW TO GET HIM OUT OF THE HOUSE

There are three obvious ways to get her out of the house and probably more if you are creative. The first is arguably the easiest and most direct way to get her out, this method bypasses the legal system and we see it happen every day.

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CONVINCE HER TO MOVE OUT

Everyday couples separate without the intervention of the court. Conversations happen each day where spouses bargain, cajole, and discuss who is going to live where. You know your spouse better than I do, so think long and hard if there is any way to entice her to move out. If this doesn't work, move on to plan B.

SECURE AN ORDER OF PROTECTION

The **second** most direct way to get your wife out is with an order of protection. If your wife has committed any recent acts of domestic violence, you may qualify to obtain an order of protection. This is a civil order that your wife must stay away from you and this usually includes your home address, your work address and sometimes the address of the school your children attend.

If your wife has committed an act of domestic violence (stalking, harassment, assault, battery, kidnapping, etc.) you can get an order of protection at any courthouse and you don't need an attorney (but it could help.) There is no filing fee, but when filling out a petition for an order of protection you need to be very specific as to the dates and details of each incident of domestic violence. It will activate as soon as it is served and it will act as a fast and effective way to get her out of the house.

Service is via a state marshall. Once served, your wife can contest the order of protection. If she does, you will need to prove all of the allegations in your petition, and you will be limited to presenting evidence about what is specifically mentioned in the petition. You will want to bring an attorney with you to court for this hearing. The initial order is good until the hearing date, at which time you will need to put on evidence to get the order extended.

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TEMPORARY ORDER IN FAMILY COURT

The **third** way to get her out of the house is with a temporary order from the family court. In order to get a temporary order, you or your wife must have previously filed a petition for divorce in the family court. Without a pending petition, the judge has no authority telling you who can or can't live in your house. Once there is a petition pending, you can file a motion for temporary orders seeking exclusive use of the home. This is in no way guaranteed. You will need to provide a good reason for the judge to make her leave the house. If your wife has engaged in bad behavior that doesn't necessarily rise to the level of an order of protection, you may be able to secure an order of exclusive use of the house from the judge.

Once you have executed phase one (getting her out) now we can move on to phase two:



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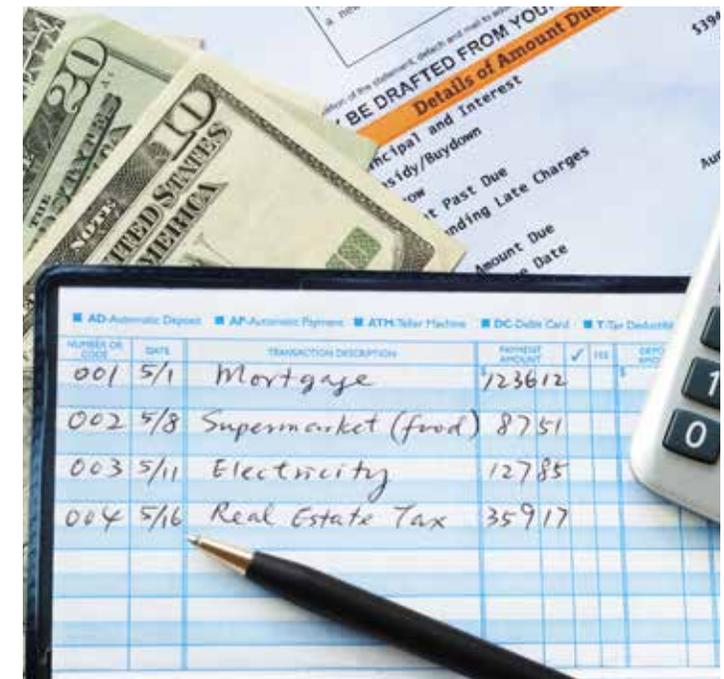
PAYING FOR THE HOME

There are a number of things that need to happen in order for you to keep the marital home. You have already gotten her out, now in order to keep the house there are a number of things that will need to happen. First, you will need to determine an overall equitable distribution of property. For instance, if the home has \$100,000 of equity, you will need to buy your wife out, either through offsetting property (like retirement assets) or by refinancing and taking out half of the equity.

Second, you need to be able to afford the house. Remember, this is the house that you and your spouse bought together, presumably with two incomes or with one income supporting one house.

Now those two incomes or one income are supporting two households. Maintaining an identical standard of living is almost unheard of. This is another reason why the status quo and getting her out of the house are so important. If your wife moved in with her parents, her expenses are low and your expenses still include the family home. Budget carefully! Many times men put themselves in a dire financial situation in order to keep the house. Make sure this is the best decision for your long-term wellbeing.

Finally, you will most likely need to refinance the house into your name alone. This is not a requirement, but your ex and her attorney would be silly not to require you to refinance in your name alone. Sometimes inexperienced attorneys or self-representing litigants overlook the fact that just because



the house is awarded to one spouse, the lender has not released both spouses from the note on the house. The divorce decree is not binding on the lender.

In sum, if you follow these step-by-step instructions and stick to an overall plan you may end up with the kids, the house, and a greater sum of alimony than you would have had otherwise. The key in any divorce is starting with a plan, coming up with a strategy and careful execution. We can help. Come see us today for a personal strategy session.

ABOUT CHARLOTTE CHRISTIAN LAW, P.C.



OUR GOAL: Outsmart, Outwork, Prevail. Can't guarantee an outcome, but we can guarantee that we work all day, every day to work toward our goals. Our physical office is located in Huntsville, but we work in all North Alabama counties.

First of all, no one ever feels like they will end up calling a divorce lawyer. When you've gotten married, you thought it was forever. You said "I do" and felt that it would be wedded bliss forever. As you've gotten older, you may have felt like the distance between you and your spouse has grown wider. No one expects that the person they love will cheat on them or leave the life that you've built together.

If you are feeling distraught, you are not alone. We are here to listen, to help and to be on your side. A lawyer is merely a phone call away and we will take the time needed to listen to your situation and offer comfort in helping you through this phase of life. If you find that a divorce is your only option, call us and we will lift the burden from your shoulders.

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