



Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP

Answers to pressing questions on Family Law.

Don't Leave home just yet.

Question: We both live in the same home and tensions are rising. I am male, aged 43. We have two small children and I would prefer to move out. What happens if I do?

Answer: This is one of the most difficult questions to answer because much depends on the facts for each case. Generally, in the absence of violence or the serious threat of violence, I advise clients to stay put and not move, but rather to get therapy or someone to speak with on how to control the tension in the home. Pending a resolution, put all separation issues into a binding legal agreement or court order. The reasons are multiple. First, if you leave the home and your spouse stays with the children, she then could be deemed the de facto custodial parent after a short period of time. This means that if push comes to shove and the parties went to court to sort out differences, a judge would likely view you leaving as an acknowledgement that parent left behind with the kids-where they normally sleep in the matrimonial home- as the parent that should make their decisions. Not only for their day-to-day care, but also the major decisions affecting their lives such as education, religion and health. That is the moment you leave without the children, even without a court order, you will be deemed to have already granted her a type of acknowledgement, A future judge will interpret that as, historically speaking, she has had factual custody until the matter came before him for a decision on legal custody, And the process could take several months. Thereafter, no matter how good a parent you claim to have been, no matter how many allegations you may have against her parenting skills, and no matter how badly the children may want to live with you, the very act of the status quo being with Mom for all those months, and by you having entrusted them with her to begin with will all provide a very hard challenge to overcome in any custody battle. Moreover, with respect to your interest in the house, you may lose any interest in the increase of its value after the date of separation if it is registered solely in her name. Much depends on whether or not you registered it in her name solely in order to avoid prospective creditors. If so, you may possibly lose and benefit in the increase in its value after you separate.

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