



FAMILY LAW GUIDE

DOMESTIC VIOLENCE NON-MOLESTATION AND OCCUPATION ORDERS

No one has the right to physically, sexually, emotionally, economically or psychologically abuse you whether you are female, male or a child.

The Family Law Act 1996 and the Protection from Harassment Act 1997 enable the Court to make orders protecting individuals from the unlawful acts of other people. These are often referred to as injunctions. Under the Family Law Act the Court has the power to make 'non-molestation' orders and 'occupation' orders. Additionally not only does the Protection from Harassment Act provide a common law remedy to take out an injunction but the Act also makes it a criminal offence to pursue a course of conduct which amounts to harassment of a person.

There are agencies who do provide counselling and support for victims of domestic violence. If you consider that you are being in any way abused by another person it is extremely important that you seek the advice of a qualified Family Solicitor to see whether you can be protected by an order of the Court thus ensuring your safety and peace of mind.

How can a 'non-molestation' order help?

A non-molestation order is an order granted

by the Court which prevents a person from being molested by an 'associated person'. It is essentially an order to prohibit one person from assaulting, intimidating, harassing or interfering with another.

What does molestation mean?

The term molestation is not defined by the Act. It will however include behaviour that amounts to such a degree of harassment that the intervention of the Court is required.

What is an 'occupation' order?

The Court has the power to make a number of occupation orders that vary in scope and duration. For example an order may regulate the occupation of the home or indeed exclude one party from living at the property. Entitlement to an occupation order will depend upon the status of the parties involved as 'associated persons'.

If an occupation order is applied for and granted then in certain circumstances the Court does have the power to make a financial order whereby one party can be ordered to pay the mortgage, rent and other household bills.

Who is entitled to apply for a non-molestation and/or occupation order?

Under the Family Law Act 1996 the following "associated persons" are able to apply for such an order:

- III Those who are or have been married to one another or are or have been civil partners;
- III Cohabitants and former cohabitants
- III Those who live or have lived in the same household other than by reason of them being the other's employee, tenant, lodger or boarder;



- ||| Certain relatives;
- ||| Those who have agreed to marry one another or to enter into a civil partnership agreement, even if the agreement ended within the last three years;
- ||| Those who are or have been in an intimate personal relationship of a significant duration;
- ||| If in relation to a child, persons who are either the parent or have parental responsibility for that child;
- ||| In relation to a child who has been freed for adoption, the natural and adoptive parents of an adopted child, the natural grandparents of an adopted child and any person with whom the child has at any time been placed for adoption.

An associated person other than a spouse/ex-spouse/civil partner/ex-civil partner/cohabitant/ex-cohabitant may only apply for an occupation order on a property where they are already entitled to occupy it (e.g. through tenancy, or ownership).

Can an order be granted immediately?

In an emergency the Court does have the power to consider an immediate application to the Court and grant an interim order without the other party being aware of the proceedings. The length of time it takes to

obtain an order will depend solely upon the particular circumstances of each case.

How long will an order last?

Again this will depend on the circumstances of the case. In certain circumstances an order can last for a maximum of six months. However in other cases an order can be of a longer duration.

Is it possible to extend an order before it expires?

It is possible to extend an order if the Court considers that there is still a need for protection to continue. This must however be done before the date of expiration of the order.

If the terms of the order are broken is there a remedy available?

Non - Molestation orders

- ||| Breach of a non-molestation order is a criminal offence. Therefore if the other person knowing that the order has been made, does anything which is forbidden by the order, they will be arrested and the matter will be dealt with by the police.

Occupation orders

Breach of an occupation order is not a criminal offence. However the Court has the ability to attach a 'power of arrest' to an occupation order if the Court considers that the circumstances warrant it. If the order contains a power of arrest and is breached by the other the person the police have the power to arrest that person. The Judge will then consider the breach of the order and if satisfied that a breach has taken place can send the other person to prison or impose a fine.

If the order does not contain a 'power of arrest' but a breach of the order occurs, an application can be made to the Court for the other party's committal to prison for disobeying the terms of the order.

This Guide contains summaries of complicated issues and should not be relied upon in relation to specific matters. You are advised to take legal advice on particular problems.

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