

# Who gets the house in a divorce?

“I love my house; I don’t want to sell it.”  
“I just want to keep the house until my kids go to college.”

“I want to get rid of the house before we are divorced, but my spouse won’t agree.”

“The house is in my name, so do I get to keep it?”

These are among the common refrains we hear from clients as early as the initial divorce consultation. The answers are not necessarily simple.

First off, for the purposes of equitable distribution, it doesn’t matter if title is held in the name of one spouse or the other, or both. It is marital property and subject to equitable distribution pursuant to Connecticut General Statutes (CGS) section 46b-81.

Next, the court does not have jurisdiction to order the house sold during the pendency of a divorce action, as the CGS section 46b-81(a) authorizes the court to do so only at the time of dissolution. However, the parties may agree otherwise.

Whether or not to hold on to the house and for how long depends on the overall financial circumstances of the divorcing parties. But in every case a spouse who thinks he or she wants to hang on to the house needs to determine if it is affordable based on the allocation of assets and support, if any. Other considerations, such as tying up one’s

equity or waiting until a child goes off to school, also come in to play. A court has the authority at the time of the dissolution, to order the house sold, delay the sale for a period of time, or order it transferred from one spouse to another.

Be very careful about asking for the house to be transferred to one spouse. That spouse then assumes all the risk with regard to the value. For many years, lawyers regularly counseled clients, often women who wanted to stay in the house, that bargaining for that as an asset was a good deal. That is when houses regularly appreciated, especially in Fairfield County. In the last few years, we have seen many of these properties go upside down. The spouse who thought she was getting a good deal keeping the house too often ends up with a depreciated asset and difficulty extricating herself from an adverse financial situation.

As for expenses while a spouse is staying in the house, most often the spouse who retains exclusive possession or is awarded the house outright is responsible for the day-to-day expenses.

Bottom line: Do your homework and be careful what you wish for.

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