

NON-MOLESTATION AND OCCUPATION ORDERS (FAMILY LAW ACT 1996)

Domestic abuse is an incident or pattern of behaviour that can be controlling, coercive, threatening, physical, emotional, financial or sexual. Taking positive action can protect you and your child from abuse or harassment.

WHAT IS A NON-MOLESTATION ORDER?

A non-molestation order protects you and any relevant child from abuse or harassment. This order can also prevent someone from coming near your home. It may be possible to obtain both a Non-Molestation and an Occupation Order (See below).

WHO CAN APPLY FOR A NON-MOLESTATION ORDER?

To apply for a non-molestation order, you must be an "associated person" to the other party:

- someone you are or had a relationship with
- a family member
- someone you are living or have lived with

This includes those who have been in intimate personal relationships of significant duration. Your family lawyer will be able to advise you whether you can apply.

WHAT IS THE PROCEDURE?

The person applying to the court for protection must complete a form and a witness statement detailing what has happened, which will be sent to the other party.

Usually, the respondent will prepare a witness statement in response to yours. Then, when the court receives your application, it will fix a hearing to decide what should happen.

In deciding whether to make an order, the court considers the applicant's health (mental and physical), safety, and well-being or any relevant child. In addition, the court must be satisfied the applicant or children need protection. Non-molestation orders often remain in place for a year but can be extended if necessary. Breach of a non-molestation order is a criminal offence and should be reported to the police.

EMERGENCY ORDERS

In the event you need immediate protection, you can apply for an "emergency order". The court application is not immediately sent to the other party. When the court hears your application, you will need to attend court. If the court makes an Order, the other person is sent your application, and the order is made. The

court will fix another hearing to decide what should happen next.

WHAT IS AN OCCUPATION ORDER?

An occupation order determines who should live in or return to the home (or any part of it) and can restrict someone from entering the surrounding area near your home.

WHO CAN APPLY FOR AN OCCUPATION ORDER?

Anyone with a legal entitlement to occupy the property, which has at some time been their home, and where the parties are "associated". Your family lawyer will be able to advise you whether you can apply.

WHAT IS THE PROCEDURE?

The applicant must complete a court form and provide a witness statement detailing the reasons why they are seeking the order. Usually, the papers will be sent to the respondent, who has a chance to prepare their own witness statement. Finally, the court will list a date and time for a hearing to decide what should happen.

The court must balance the harm that the applicant or child will suffer if the order is not made against that of the other party if the order is made.

Occupation orders usually remain in place for 6 months but may be extended for up to 6 months at a time. Breach of an occupation order is not a criminal offence. Still, a power of arrest can be attached to the order, allowing the police to arrest the person in breach.

UNDERTAKINGS

When considering either a non-molestation order or an occupation order, it is possible to give undertakings, which are binding promises to the court, instead of making an order. Breach of an undertaking is contempt of court, which can be punished by a committal to prison. Still, it is not a criminal offence, and no power of arrest can be attached.

This guide is intended to be general information and not to be relied upon as legal advice. This is a complex area, and each case is different. We would suggest you contact us to obtain complete and proper legal advice.