

What if The Abuser Took My Car? Or Won't Let Me Into My Home? Or Is Hurting Me Financially In Other Ways?

You have the right to seek a court order regarding the use, possession, and control of real or personal property (for the duration of the order) and the payment of any liens or encumbrances coming due during that period. (Family Law Code, Section 6342.5). The court can also make a finding that specific debts were incurred as the result of domestic violence and without your consent.

HERA

housing and
economic
rights advocates

Contact us:

(510) 271-8443 Ext. 300

inquiries@heraca.org

www.heraca.org

P.O. Box 29435

Oakland, CA 94604



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SURVIVORS
RIGHTS
REGARDING
FINANCIAL
ABUSE



A COURT CAN ORDER THAT YOU GET RESTITUTION OR REIMBURSEMENT FOR YOUR LOSSES.

“An order that restitution be paid to the petitioner for loss of earnings and out-of-pocket expenses, including, but not limited to, expenses for medical care and temporary housing, incurred as a direct result of the abuse inflicted by the respondent or any actual physical injuries sustained from the abuse.” (Family Law Code, Section 6342)

POSSESSION OF HOME - CAL. FAM. CODE §§ 6321(A); 6340(C)

As part of a domestic violence restraining order, a court can order the restrained party to move out of the family residence, the residence of the other partner, the common residence, or the residence of the partner caring for children, regardless of which party holds legal title to the home (or is on the lease).¹ This allows a domestic violence survivor to stay in stable housing, even if the property is owned by their partner.

MORTGAGE PAYMENTS – CAL. FAM. CODE § 6324

As part of a temporary domestic violence restraining order, a court can make an order determining who will be responsible for any liens or encumbrances (such as mortgage payments) that will be due during the period in which the order will be in effect.²

If the survivor’s name is on the mortgage, but not the promissory note, a servicer might try to reject payments from the survivor. The survivor can petition the court to transfer the promissory note and obligations to the survivor, or at least may insist on redeeming the mortgage by refinancing.³

TRANSFERS PENDING DIVORCE – CAL. FAM. CODE § 2040

During the divorce between a domestic violence survivor and their partner, the court will issue an automatic temporary restraining order. →

This is to prevent either partner from transferring any interest in the residence until all property ownership is decided and disseminated by the court.⁴ This protection is not specific to domestic violence survivors, but may be helpful in preventing an abuser from selling or otherwise transferring a family home that is solely in the abuser’s name.

This automatic temporary restraining order also prevents either partner from encumbering the property during the divorce, which may offer some protection against an abuser’s attempts to strip equity out the home preemptively.⁵

DID YOUR ABUSER STEAL YOUR IDENTITY TO RUN UP DEBT UNDER YOUR NAME?

Civil Code § 1788.18 allows a victim of an “identity theft crime” to dispute and delay a debt collector’s attempt to collect a debt incurred through identity theft. Once the victim of identity theft has submitted required documentation of the identity theft and its relation to the specific debt being collected, the debt collector must stop collection activity until it completes a review and finds that the debtor is responsible for the specific debt disputed.⁶

¹Cal. Fam. Code § 6321; see, e.g., Nicole G. v. Braithwaite, 49 Cal. App. 5th 990, 993, 262 Cal. Rptr. 3d 918, 920 (2020) (unreported) (“The Domestic Violence Prevention Act and Family Code 1 sections 6340, 6321, and 6324 authorize a court to order the restrained party to move out of property and allow the protected party to use and possess the property.”).

²Cal. Fam. Code § 6324.

³Loughran v. Lemmon, 19 App. D.C. 141, 149 (D.C. Cir. 1901); NCLC, Special Issue: Foreclosures and Domestic Violence Survivors, NCLC Reports Bankruptcy and Foreclosures Edition 27, at 14, 16 (Jan. & Feb. 2009).

⁴Cal. Fam. Code § 2040.

⁵Cal. Fam. Code § 2040(a)(2)(A).

⁶Cal. Civil Code § 1788.18(d).