

Does she have to leave? Women's rights to stay in the home after violence



This fact sheet summarises the Ask LOIS webinar on this topic, presented by Alex Davis, Solicitor, Women's Legal Services and Natalie, Staying Home Leaving Violence on 17 February 2015. This webinar can be viewed for free at www.asklois.org.au/webinars/past-webinars.

This fact sheet covers:

- Who are Staying Home Leaving Violence and how can they help
- What the law says and what are the woman's rights to stay
- Orders to make a violent perpetrator leave

Quick tips

- A woman may not have to leave, even if her partner refuses to leave– there are often enforceable options to stay
- If a woman leaves the family home she does not lose the right to her share of the home or other property
- In Family Law, it often doesn't matter whose name the house/mortgage is in for property rights to exist – refer clients for legal advice!

Women and homelessness

- Domestic and family violence is the main reason for women and children to leave their homes in Australia¹
- In 2013-14, 84,774 adults and children received homeless assistance as a result of experiencing family or domestic violence, an increase of 7,000 from 2012-2013²

What is Staying Home Leaving Violence (SHLV)?

- Intervention program to increase safety and reduce risk of homelessness for women (with or without children) leaving domestic violence
- To support women and children to stay safely in their own homes or a home of their choosing and have the perpetrator leave
- Integrated interagency approach funded by FaCS
- Each SHLV is slightly different and the services they provide depending on how they are auspiced

How does SHLV support women and their children?

- Comprehensive risk assessment and safety planning
- Security upgrades to the home, eg changing locks and putting up stronger window screens
- Court support and advocacy re: ADVOs and family law matters
- Liaison and collaboration with the police
- Casework for financial, tenancy and other personal issues
- Referrals to legal advice, counselling and other support services – integrated and coordinated approach

Who can SHLV assist?

- Women over 18 years (with or without children), where the perpetrator of the violence has left
- Women can self-refer or be referred by workers from government or non-government agencies
- SHLV need to prioritise the most high risk cases

¹ Spinney, A 2012. Home and safe? Policy and practice innovations to prevent women and children who have experienced domestic and family violence from becoming homeless. Final report no. 196. Melbourne: Australian Housing and Urban Research Institute

² Australian Institute of Health and Welfare, Specialist Homelessness Services: 2013-14

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When referral to SHLV is not appropriate

- In some cases it may not be the safest option
- Women who do not want (or are not ready) to separate from their abusive partners ought not to be referred
- Men are not eligible but workers may assist with referrals

Case Study: Grace

Grace and her partner Greg have been married 6 years. They own a house together and both of their names are on the certificate of title. They have 3 children together. Greg has been physically and emotionally abusive to Grace since they moved to Australia together 4 years ago. In the most recent incident, Greg held a knife to Grace's throat and threatened to kill her. Greg refuses to leave. Can Grace make Greg leave?

Options to make a violent partner leave the home

- AVO with exclusion order
 - Support through Staying Home Leaving Violence
- Exclusive/sole occupancy order through Family Law Courts

What are exclusion orders on AVOs?

2. The defendant must not reside at the premises at which the protected person(s) may from time to time reside, or other specified premises: *(address)*
3. The defendant must not enter the premises at which the protected person(s) may from time to time reside or work, or other specified premises: *(address)*
4. The defendant must not go with ____ m of the premises at which the protected person(s) may from time to time reside or work, or other specified premises:

What the court considers in deciding whether to make an exclusion order

- The **safety and protection** of the protected person and any child directly or indirectly affected by the alleged conduct of the defendant and
- The **effects and consequences** on the safety and protection of the protected person and any children living at the residence if an exclusion **order is not made**
- Any **hardship** that may be caused by making or not making the order, particularly to the protected person and any children
- The **accommodation needs** of all relevant parties, in particular the protected person and any children, and
- Any other relevant matter

Changing the locks on a co-owned house

- At law, the rights of the occupying partner to change the locks is not very clear
- It is generally accepted if there is an AVO in place with an exclusion order, the possessing partner can safely change the locks
- Usually lock changes considered justifiable once:
 - Clear separation; and
 - Departing partner has somewhere else to reside; and
 - Possessions of the departing partner have been removed



Examples of how SHLV would assist Grace

- Liaison with WDVCS at AVO mention day to have an additional order added
- Provided copies of AVO to children's preschool
- Completed a risk/lethality assessment
- Completed Home Safety Audit and security update (changed locks, added lock for a safe room, a peephole at front door and sensor lights)
- Connected Grace with counselling services
- Referred Grace for legal advice and assistance
- Education and self awareness on dynamics DV
- Safety planning with Grace

Safety planning for women wanting to stay in the home

- Travelling to/from places
- Calling police in an emergency and keeping a breach book to record all potential breaches
- Speaking with neighbours and giving permission to call police should they hear anything suspicious
- Keeping mobile charged and with her at all times
- Locking doors of house
- Keeping a copy of AVO with her at all times
- Blocking phone calls
- Not answering the door unless expecting a visitor

Questions to ask when safety planning:

- Does he respect the law?
- Does he care about his reputation in the community?
- Does he work? Are there specific times of the day when he's free?
- Does he have a criminal record?
- Does he have any other people who could further abuse her?
- Does he regularly consume excessive amounts of alcohol or consumes illicit drugs?
- Does he drive?

Costs of increasing household security

- HNSW can fund some security upgrades. SHLV utilise this as much as possible and can provide some extra security upgrades through brokerage
- Through Victims Services, your client may be eligible for immediate needs financial assistance and other assistance
 - 2 years from act of violence to claim for 'financial assistance'
 - Victims Access Line: 1800 633 063

Changing the locks – tenancy

- Tenants can change the locks, without real estate/landlord's consent if any occupant has an AVO with exclusion order (interim, provisional or final) against them
- Tenants can withhold copies of the new keys from the excluded occupant
- The occupying tenant must provide the real estate/landlord with a copy of the key in 7 days of changing it
- For more information on AVOs and Renting, see the Ask LOIS factsheets on that topic, or contact your local Tenants Advice and Advocacy Service (www.tenants.org.au)



Exclusive/sole occupation order

- Not preferable to AVOs – a technical avenue
- Family law courts can make orders it thinks proper about the use and occupancy of the ‘matrimonial home’
- Doesn’t matter if house/mortgage is only in one person’s name
- Available to married couples and de facto couples. For de facto couples:
 - Relationship has lasted at least 2 years; or
 - There’s a child of the relationship; or
 - The party applying to the court made a substantial contribution to the relationship; or
 - A serious injustice would result if the court did not make the order; or
 - The relationship is registered under State or Territory law

Criteria for sole occupancy order

Suggested considerations (*Davies v Davies*) for the court:

- The means and needs of the parties
- The needs of the children
- The hardship to either party or to the children
- The conduct of one party (where relevant) which may justify the other party in leaving the home or in asking for the expulsion from the home of the first party
- Must be more than a balance of convenience

What if my client can’t afford rent or mortgage repayments?

- Rent assistance such as start safely subsidy may be available if leasing
- Spousal maintenance order may be available
- Family Court can make orders for one party to pay mortgage repayments in some cases
- Asking bank to vary mortgage repayments
- Refer to financial counselling: 1800 007 007 (Credit and Debt Hotline)

Contact SHLV

Sydney

- Blacktown – 9677 1962
- Campbelltown – 1800 077 760
- Eastern Sydney – 0439 414 673
- Fairfield/Liverpool – 9602 7795
- Parramatta/Holroyd - 9636 8437
- Penrith – 4721 2499
- Redfern – 9699 9036

Regional

- Bega – 6492 6239
- Dubbo – 6883 1561
- Kempsey –6562 2272
- Lake Macquarie – 4943 9255
- Maitland/Cessnock–4937 1927
- Moree – 6752 8027
- Newcastle – 4926 3577
- Shoalhaven – 4421 7400
- Walgett - 6828 1611
- Wollongong – 4255 5333
- Wyong/Gosford – 4356 2672
- Tamworth - 6766 4596