

Restraining Orders in New Jersey

What can you do when your spouse abuses you? We are not speaking of "marital bickering" here, but rather severe physical or emotional abuse.

In New Jersey, a Judge has the authority to grant a Restraining Order at the request of a person in a relationship which would have the effect of temporarily restraining the other person from returning to the shared residence and from being in the presence of the alleged victim.

The process is two part. The first part of the process involves the victim going either to the Superior Court (during business hours) or to the local police department (during non-business hours) and filing a set of papers. These papers are called a Complaint and they outline the acts that the victim says that the perpetrator committed against the victim.

A Judge or Hearing Officer will decide whether circumstances exist that warrant the issuance of a temporary Restraining Order.

At this stage of the proceedings the alleged perpetrator usually has no knowledge that the alleged victim has filed a Complaint.

Thus, the alleged perpetrator is often surprised to find a law enforcement officer serving him with a temporary Restraining Order which bars him from returning to a certain location pending further Court Order.

The second part of the procedure involves what is known as the "return date", which is a day for both parties to appear in the Superior Court of New Jersey in Freehold.

At that time, the parties will appear before a Superior Court Judge. The Judge will listen to the testimony of the alleged victim and will then listen to the response by the alleged perpetrator. An actual trial takes place, with direct examination of witnesses and cross-examination of witnesses, as in any other trial.

After considering the testimony of the witnesses, as well as any evidence presented such as photographs and other physical items that either or both parties may use to prove their case, the Judge will decide whether or not an act of Domestic Violence has occurred.

If the Judge decides that in his opinion an act of Domestic Violence has not occurred, then he will dismiss the Complaint at that time. All legal action is then over, and both parties are free to return to any locations that were previously limited by the Restraining Order.

On the other hand, should the Judge find that an act of Domestic Violence did

occur, then the Judge has a broad range of remedies available to help the victim of Domestic Violence. These remedies include the following:

- (1)** The Court may restrain the aggressor from subjecting the victim to domestic violence in the future.
- (2)** The Court may grant exclusive possession to the victim of the residence regardless of who owns the residence. Of course, this Order would not affect title to real estate; it would simply determine who has the right to live there at the present time.
- (3)** The Court may enter an Order providing for custody of minor children and parenting time.
- (4)** The Court may order a risk evaluation of the perpetrator prior to allowing the perpetrator unsupervised contact with the children.
- (5)** The aggressor may be ordered to pay the victim monetary compensation for losses suffered as a direct result of the act of domestic violence.
- (6)** The Court may order the aggressor to receive professional domestic violence counseling, and may require the aggressor to provide the Court with documentation of attendance at professional counseling.
- (7)** The Court may also order the aggressor to pay for the professional counseling.
- (8)** The Court may enter an Order restraining the aggressor from entering the residence, property, school, or place of employment of the victim or of other family or household members of the victim and the Court may require the aggressor to stay away from any specified place that is named in the Order and is frequented regularly by the victim or other family or household members.
- (9)** The Court may enter an Order requiring the aggressor to refrain from making contact with the victim or others, including an Order forbidding the Defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm including personal, written or telephone contact with the victim or other family members or their employers, employees, or fellow workers, or others with whom communication would be likely to cause annoyance or alarm to the victim.
- (10)** The Court may order the aggressor to make or continue to make rent or mortgage payments on the residence occupied by the victim if the aggressor is found to have a duty of support to the victim or other dependent household members.

(11) The Court may enter an Order granting either party temporary possession of specified personal property, such as an automobile, a checkbook, documentation of health insurance, an identification document, a key, and other personal effects.

(12) The Court may enter an Order awarding emergency financial relief, including emergency support for children, emergency support to the victim and other dependents, if any.

(13) The Court may enter an Order awarding temporary custody of a minor child. The Court, by statute, must presume that the best interests of the child are served by an award of temporary custody to the non-abusive parent.

(14) The Court may order a law enforcement officer to accompany either party to the residence or to any shared business premises to supervise the removal of personal belongings in order to ensure the personal safety of the victim when a Restraining Order has been issued.

(15) There are other powers granted to the Superior Court that are not specifically listed above. Essentially the Court is allowed broad discretion to fashion an order that will best serve the victim and protect the victim, once a finding has been made that the victim has, in fact, been the victim of an act of domestic violence by the aggressor.

We at Kaplan and Carlin, LLC have represented men and women regarding restraining orders for almost 20 years. Please feel free to call us if we may be of service to you in this area.

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