



HENSON EFRON

Enforcing the Sale of the Home After Divorce

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The entry of the dissolution judgment is the end to the marriage, but it may not be the end of the litigation. Even in cases that do not involve children or ongoing spousal maintenance obligations, problems can arise with respect to enforcing the division of property.



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For many people, their home is their most valuable asset and one which will require some type of action after the dissolution in order to implement the division of property. Obligations to sell the home and divide the proceeds or satisfy a lien against the home result in post-decree entanglement and countless opportunities for conflict.

Unlike child support and spousal maintenance, which have well-defined enforcement tools such as automatic income withholding, contempt, and sequestration, the options for enforcing the sale of a home are more limited. One of the reasons for this is that divisions of property are, by definition, final and not modifiable.

Minn. Stat. § 518A.39, subd. 2(f). A fine line exists between impermissibly modifying an otherwise final division of property, and issuing an order that appropriately enforces the division of property as set out in the decree. Generally speaking, courts have considerable latitude to “implement, enforce, or clarify the provisions of a decree, so long as it does not change the parties’ substantive rights.” *Redmond v. Redmond*, 594 N.W.2d 272, 275 (Minn. Ct. App. 1999). Thus, when it comes to addressing post-decree disputes concerning a home, the court has a lot of power. Discerning when the exercise of that power crosses the line is intensely fact-specific.

A common problem is where the decree calls for the sale of the home but the parties cannot seem to implement that provision or the party who is charged with selling the home is dragging their feet. The court can grant one party the power to select the realtor and to be in charge of the sale. *Sullivan v. Sullivan*, 374 N.W.2d 517, 519 (Minn. Ct. App. 1985) (affirming order establishing deadline for realtor-husband to sell home and directing wife to select a realtor if home had not been sold where parties were having difficulty agreeing on price and terms of sale); *Dahlen v. Dahlen*, 2000 WL

1577112, at *2 (Minn. Ct. App. Oct. 24, 2000) (affirming order granting husband exclusive right to sell home where parties could not cooperate with respect to listing home for sale). If a party has failed to sell the home by a required deadline, the court can set the listing price. *Linder v. Linder*, 391 N.W.2d 5, 8 (Minn. Ct. App. 1986) (affirming order setting listing price where wife was required to sell home to satisfy husband’s lien by a given date and had failed to do so). The court can also prospectively order reductions in the listing price to facilitate a sale and require a party to accept offers within a given range. *Linder*, 391 N.W.2d at 8; *Dahlen*, 2000 WL 1577112, at *2 (affirming establishment of listing price and scheduled reductions). Even seemingly draconian price reductions have been approved where a sale has dragged on for years. *Tagg v. Tagg*, 2014 WL 1407791, at *5 (Minn. Ct. App. Apr. 14, 2014) (affirming order requiring listing price be reduced by \$40,000 per month where parties had had series of conflicts over five year period and had been unable to effect sale).

If a party’s occupancy of the home is compromising efforts to sell, the court can order the party to vacate the home. *Zweifel v. Zweifel*, 2013 WL 1788512, at *4 (Minn. Ct. App. Apr. 29,

2013) (affirming order requiring wife to vacate homestead because she had repeatedly hindered efforts to sell, including refusing to provide a key to the realtor and refusing to allow the realtor's placement of a lockbox); *Jones v. Jones*, 2000 WL 462620, at *1-2 (Minn. Ct. App. Apr. 25, 2000) (affirming order requiring husband to vacate homestead because he had damaged homestead and was interfering with efforts to sell as required by judgment and decree). However, there must be sufficient evidence showing a causal link between a party's continued occupancy and the lack of sale to justify ordering a party to vacate. See *O'Connor v. O'Connor*, 386 N.W.2d 395, 398 (Minn. Ct. App. 1986) (affirming denial of motion to vacate where wife accused husband of failing to keep home in showing condition and husband claimed house was not selling because of its location and the reputation of the school district).

In extreme situations, the court can even amend the judgment to transfer title from one party (or the parties together) to the other to implement a sale. *Dahlen*, 2000 WL 1577112, at *3 (affirming ex parte order transferring title to husband where he had been granted authority to sell, wife's attorney had been notified that husband would be allowed to sign paperwork for wife if she failed to appear for closing, and wife failed to appear for closing); *Jones*, 2000 WL 462620, at *2 (affirming transfer of title to wife where husband failed to comply with orders to sign listing agreement); *Tagg*, 2014 WL 1407791, at *3-4 (affirming transfer of title to wife where husband failed to comply with order to sign purchase agreement and had previously been warned that court would order sale).

Although the temptation when faced with a misbehaving party may be

to punish, care must be taken to avoid altering a party's substantive rights. This is generally measured in dollars and cents by comparing what the party is receiving to what they would have received under the original decree. See *Hanson v. Hanson*, 379 N.W.2d 230, 233 (Minn. Ct. App. 1985) (affirming conversion of personal property award to cash award where parties were unable to divide personal property and "[n]either party received more or less than each received under the original judgment and decree").

One way a party's substantive rights can be altered is by granting a party authority to sell the property who lacks any motivation to obtain a fair price. In *Rambow v. Rambow*, the court of appeals reversed an order granting wife authority to sell property awarded to husband to satisfy wife's lien because wife "has no incentive to protect [husband's] interest in the property and can adversely affect his interest by selling at a price that satisfies only her interests" 2008 WL 1748285, at *2 (Minn. Ct. App. Apr. 15, 2008). Although this issue was not discussed in the *Dahlen* opinion which granted husband exclusive authority to sell, the same motivation concern was not present because the sale proceeds in *Dahlen* were to be split equally between the parties. 2000 WL 1577112, at *3. Similarly, issuing orders regarding the conditions for the sale which are likely to result in a party receiving less than fair market value for their interest can affect a party's substantive rights. See *Ulrich v. Ulrich*, 400 N.W.2d 213, 218 (Minn. Ct. App. 1987) (reversing order for private sale to highest bidding party where husband had no ability to bid and wife could purchase husband's interest with a nominal bid).

Even where a court's order concerning the sale affects both parties' rights the same way, it may nonetheless be an impermissible

modification. See *Stromberg v. Stromberg*, 397 N.W.2d 396, 399 (Minn. Ct. App. 1986) (reversing order requiring sale of homestead at public auction where decree required sale and parties had been unable to implement sale for three years). Another way a party's substantive rights can be altered is if no provision is made to ensure that the sale proceeds are distributed in accordance with the decree. *Alexander-Knight v. Knight*, 2008 WL 4977430, at *9 (Minn. Ct. App. Nov. 25, 2008) (reversing transfer of title from wife to husband in connection with enforcing wife's lien against homestead where order failed to provide that proceeds in excess of wife's lien be paid to husband). A party's substantive rights also are altered where a court declines to enforce a specific term in the decree requiring the sale of property. *Hoye v. Hoye*, 2001 WL 32775, at *2 (Minn. Ct. App. Jan. 16, 2001) (holding district court erred by not enforcing provision requiring sale of property based on husband's failure to make rental payments to wife even though husband had cured his default by the time of the hearing).

Where a decree does not specify whether a lien is enforceable by a judicial sale or foreclosure, the court may order either option. *Potter v. Potter*, 471 N.W.2d 113, 115 (Minn. Ct. App. 1991) (rejecting husband's argument that order for judicial sale to enforce wife's lien altered his substantive rights because he would lose right of redemption afford to him through foreclosure process where decree did not specify method for enforcing lien); *Erickson v. Erickson*, 452 N.W.2d 253, 256 (Minn. Ct. App. 1990) (affirming order permitting wife to enforce her lien through foreclosure where decree did not specify method for enforcing lien).

Finally, a word of caution about the case law. The starting point for

determining whether a division of property has been impermissibly modified is the language of the decree itself. Since every appellate decision involves a unique decree, the case law in this area is intensely fact-specific. Although few immutable rules of law exist, the case law can help guide us as we attempt to navigate that fine line between taking appropriate steps to implement and enforce a decree and impermissibly modifying a final division of property.

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