



PROFESSOR LEX

BY HARVEY I. HAUER

Dear Professor Lex:

I have a divorce case where the parties cannot agree on many things including what to do with their marital home. Neither of the parties can afford to keep the home on their own after the divorce. My client wants the home put on the market for sale as quickly as possible. Her husband does not want anything she wants. A realtor told me that we should have the home listed before school begins in the fall to maximize interest. Are you aware of any legal authority I can rely on to have the court order this home to be listed for sale? When I discuss this with opposing counsel, he tells me the court cannot order the house sold before the property settlement is determined.

Dear Practitioner:

In *Yeo v Yeo*, 214 Mich App 598, 602 (1995), "Plaintiff [] argue[d] that the trial court erred in allowing for the sale of the marital home [during the pendency of the case]." The Court of Appeals disagreed, and found that the "[trial] court had such authority as a court of equity." *Id* at 602 (citing *Wiand v Wiand*, 178 Mich App 137, 144 (1989)). However, in *Yeo*, the court noted that:

Allowing the sale of the marital residence was a proper exercise of that equitable power because neither party was making mortgage payments, foreclosure was threatened, and the proceeds were to be put in trust. Clearly, plaintiff did not suffer any prejudice because he had a right of first refusal to purchase the property and, if he did not exercise that right, any interest he had in the home was to be satisfied from the proceeds of the sale. [*Id* at 602.]

You should file a motion seeking relief from the court. The *Yeo* case should give you guidance in the preparation of your motion.

**Answer respectfully submitted by
Harvey I. Hauer, Hauer & Snover.**

The above response is not meant to serve as a solution to a case. That would require complete disclosure of all facts in the case, including client consultation. Rather, the intent is to provide informal guidance based upon the facts that have been presented. The inquiring lawyer bears full legal responsibility for determining the validity and use of the advice provided herein.

