

Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP
Answers to pressing questions on Family Law.

If it Won't Last...Then Get Out Fast

Question: Julie, who has been unemployed for a long time, moved in with me two years ago with her two young children, aged 5 and 7 (no kids of our own). Their dad pays child support on time, but no spousal support. The house is solely in my name. Julie pays nothing towards the mortgage or utilities, but she is good with her hands and has helped with certain home renovations, gardening, housecleaning, snow shoveling, etc. I have tenants in the basement, so she also takes care of their issues, collects and banks their rent monthly. She helps pay for groceries and household expenses. We're not married and have not really discussed it. If we did split, what legal liabilities might I have now or in the future? What can I do to protect myself?

Answers: Get out, fast. Unless, of course, you are convinced that she is the love of your life and that this is a permanent relationship. Just remember, 39 per cent of marriages lead to separation in Canada but the rate is 70 per cent for those who just live together. 1. You are not married. So, she has no "automatic" property claims. However, she could claim that her indirect contributions to the upkeep of the home and its maintenance without compensation have "unjustly enriched" you. Under the law of constructive trust, she might have become the beneficiary of an equitable proprietary interest in the home of which you might have become her trustee for a percentage of between 20-50 per cent of the home's equity. Only a judge, based on the facts of each case, can determine the precise amount or it can be negotiated by agreement. Solution: Ask her to sign a cohabitation agreement drafted by a competent family law lawyer and reviewed by her independent lawyer. 2. If and when you separate, you will likely be liable for child support for her children under the Child Support Guidelines, even though they are not your kids biologically and even though their father is already paying. And no, there is no cohabitation agreement or other agreement that can help you, even if signed before Julie moved in. So speaketh the Supreme Court of Canada and other courts. 3. Since you have not lived together for three years or more, or alternatively you have not had a child together after living together for one year, then you have no liability for spousal support, even if she grew dependent since you were married. Solution: Once again, have her sign a cohabitation agreement limiting her rights of spousal support.

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