

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

If she's paying, she may own part of the house.

Question: A friend of mine was married for 11 months and now she's separated. She's still paying for her ex's expensive condo renovations, for which they jointly borrowed. He lives there alone and won't pay the loans. He bought the condo 1-1/2 years before their marriage. Help!

Answer: Normally, the value of any asset bought into a marriage is not calculated as part of a spouse's "net worth" or "net family property." Therefore, an asset's premarital value is not shared with the other spouse when calculating property "equalization" in Ontario. For instance if, before your wedding, in 1980, you owned 100 securities in Google Inc (wish you did eh?) at \$15 per security, and on separating with your spouse they were now worth \$100 per security, you would not have to share their entire value, but just split their increase in value i.e. \$85. However, the Family Law Act makes an exception for any matrimonial home irrespective in whose name(s) it is registered. So even if the husband owned the matrimonial home prior to the date of marriage and the spouse still lived in that very same home on the date of separation, then the entire value of the equity of that home, calculated as of the date of separation, must be shared equally, including the pre-marital value. Having said that, the court can also make an award for an amount that is smaller than half of the 50-50 split if it doing that doing so would be "unconscionable," having regard to the fact that such a spouse might receive is disproportionately large in relation to a period of cohabitation that is less than five years. However, in your case the court has to consider your friend's ongoing financial contributions to the value of the home. Notwithstanding the brief marriage, she may be entitled to own a piece of the equity, as much as 50-50 percent. Why? Here the wife maybe the beneficiary of a "constructive" trust because her husband would be "unjustly enriched" if he were to benefit from her financial contributions to the upkeep of, and investments into, property that was only registered in his name, but which also belonged to her on trust principles. For these reasons the court may well not use its discretion under the Family Law Act to consider it "unconscionable" to award less than 20-50 percent of the equity (depending on the precise facts), notwithstanding the summary way it would dispense with such applications in other types of short marriages. People should not judge every spouse, in such cases, as "Goldiggers."

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