

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

Reconcile, or find yourself a Good Shoulder To Cry On.

Question: When a 3-year common law relationship breaks up, how do the assets and earnings get divided? We live in a house that my partner owned before we met. My partner looks after our son which is a far larger matter but I'm not as ignorant about it. My partner doesn't work right now but earned slightly more than I do now when he did work.

Answer: You may be considerably screwed. Unless you can prove that you contributed financially or indirectly to the acquisition or improvement of your partner's house you have no right whatsoever to any share of it since you are not married to him. In fact, unless you got a court order confirming that you are entitled to share in the equity of the home because you directly or indirectly contributed to its improvement, then he could legally kick you out of the house tomorrow without any notice. The most common way of proving such contribution is if you paid for part of a monthly mortgage commitment, utilities or realty taxes. The sole exception to this rule might be in those cases where you could prove that you were his tenant through a record of consistent monthly payments, a lease agreement or if you have signed a cohabitation agreement with him giving you "rights of possession." In common law relationships, absent such a court order, which acknowledges proof of such contributions or absent a cohabitation agreement, whatever is in your name is yours and whatever is in his name is his. There is no "sharing: if the values of your assets (or debts). Jointly owned assets are divided equally. In your particular case it gets worse. Since he's currently unemployed and you are working, then you may have to pay him spousal support until he finds a job, even though you are not married since for the purposes of spousal support, he becomes a "spouse" (married or not) for the purpose of such support only (not property division) after cohabiting for more than one year, or three years if you don't. If that isn't bad enough, since your partner has been the one primarily looking after your children in the event of a court challenge he is in a better legal position to get custody or at least primary care of him. Moreover, you may also be stuck paying child support accordingly to a table geared to your yearly gross income, not his. So, either reconcile or find a shoulder to cry on.

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