

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

**Don't Fool Yourself: Use a Lawyer**

**Question:** My sister is going to marry next month. Her husband and my sister will be living in the property which is jointly owned by my sister and I, and I will be moving out. I paid over half of the value of the house when we purchased it and now I am paying the property taxes and utilities while my sister is paying the mortgage for the rest of the value. My question is: will her husband be entitled to have any interest in the property if case they are separated?

**Answer:** In the event of separation of your sister and her new husband, your sister's share in this home would be considered a 'matrimonial home' under Ontario's Family Law Act. What this means is that one-half of its entire equity, including one half of its premarital value, would be included when calculating her net worth or 'net family property' as of the date of separation. Her net worth is compared to her husband's in the event of separation, or if one of them dies, and the richer of the two must pay the poorer an equalization payment. To give a simple example, if the only asset owned by your sister is her half-interest in a home worth \$400,00 and her half-interest on the date of separation was \$200,000 and her husband has no assets then she would have to pay him \$100,00 in the absence of a marriage contract (or pre-nuptial agreement). However, your one half ownership of the home stays completely unaffected. .

**Question:** If my sister and her husband want to prepare a pre-nuptial agreement, do they have to do it by lawyers or can that be done by witnesses?

**Answer:** You always need two witnesses. They can do so without lawyers but then again you can also do surgery on yourself without doctors and I don't advise that either. Use competent legal counsel. These agreements require knowledge of the law and certain skill in how to draft an enforceable agreement. Don't fool yourself.

**Question:** If there's no prenuptial agreement, do investment and RRSPs, etc. before marriage have to be shared if the couple separates?

**Answer:** Except for a home where both parties still reside on the date of separation, the values of pre-marital assets do not form part of a spouse's net family property. In that sense, pre-marital assets are not shared. However, any increase in the values of pre-marital assets after marriage is included.

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