

Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP

Answers to pressing questions on Family Law.

Don't try to do this without a lawyer.

Question: My husband and I are separating after six years. We both do not want to go through a lawyer but want everything to be legal. Our house is under my name. I understand that even though my husband is not the registered owner we need to divide the equity 50/50. Therefore, I am going to buy out his interest and give him half of the net equity. We plan to sign separation papers and file them with the local court ourselves, but we want everything to be legal. What are the appropriate procedures?

Answer: The law and procedures are so complex that you both need lawyers (independent legal advice) for such an agreement to be “legal” or legally enforceable. Anyone suggesting otherwise is mistaken. Moreover, asking me to give you “shortcuts” is no different than asking a surgeon to instruct a patient with a gallbladder stone on how to use a surgical knife after pointing out a few diagrams of the lower belly. For instance, some of the many issues a competent family law lawyer will resolve include the following. 1. Is there other property and debts on the date of marriage and on the date of separation? If so, and your husband has much more than you do, meaning a greater net worth over the course of the marriage, then maybe the split on the house equity is only 50:50 after all. For instance, he might have RRSP's that, after taxes, could be worth a great deal more than yours as of the date of separation. If so then the difference in value between the two will affect the split of the house equity. Or perhaps he has a private pension plan whose current value needs to be inexpensively valued by a pension actuary? Or he might own a yacht in Fiji? 2. If you buy out his interest in the home and he has cosigned on the mortgage then he will want the Bank to release him from any continuing obligation. At the very least he will want a written indemnity from you to indemnify him from any lawsuit from the bank if you can't or don't pay as the bank loan becomes due. 3. These agreements are not filed with the court unless one of you receives child or spousal support and wants the payments to go through the Family Responsibility Office. 4. To be legal, you also need to formally exchange current income, asset and liability statements about each other in writing and evidence that its been done.

John T. Syrtash, Associate
GARFIN ZEIDENBERG LLP
Yonge-Norton Centre
5255 Yonge Street, Suite 800
Toronto, Ontario, Canada M2N 6P4
Phone: (416) 512-8000 ext 410; Direct (416) 642-5410
Fax: (416) 512-9992
email: jsyrtash@gzlegal.com

John Syrtash is an associate and family law lawyer with the Toronto firm of *GARFIN ZEIDENBERG LLP*. Neither GARFIN ZEIDENBERG LLP nor John Syrtash is liable for any consequences arising from anyone's reliance on this material, which is presented as general information and not as a legal opinion