

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

Is a lawyer necessary if one of us is keeping the house?

Question: I have been married for 33 years. My husband and I are on the verge of divorce. We have a house worth about \$280,000. We do not wish to sell it after the divorce, one of us will keep it on mutual understanding. Do we have to see a lawyer? If not, how do I go about this?

Answer: You should both see a lawyer if for no other reason than to draft the legal documentation to transfer one spouse's interest to the other and to ensure the transfer is properly registered with the government Land Registry Office. If one spouse is assuming the mortgage on the property entirely, the spouse who is transferring his/her interest should make sure that the transferor is being completely removed from the mortgage in case of a future fault. The lawyer will ensure that happens. It is best if the spouse staying in the home pays out the old mortgage by replacing it with a new one. However, before anything happens, unless that lawyer is knowledgeable about family law and can serve as a mediator, you should both obtain independent legal advice to ensure that an even split is appropriate. Even then, both of you will require two independent legal advice certificates before signing anything. If the home is the only asset, then at the very least the law recognizes that the market value incorporates national costs of disposition, such as four to six percent in real estate commissions and \$500-\$750 in lawyer's fees when the property is actually sold to a third party. But since the property is not actually being sold to a third party, lawyers normally agree to discount the market value of such notional costs of disposition, once you and your spouse have agreed upon the figure. However, after such a lengthy marriage it is often grossly unfair to divide equally the equity (after discounting such costs) by simply walking away. After 33 years your husband may have accumulated a net worth that could include the value of an interest in a profitable business, a large private government pension, substantial RRSP's, significant real estate holdings and cash in accounts or securities that he did not inherit or were not gifted to him and that he acquired or that grew substantially during the course of the marriage. As a result, you may possibly be entitled to equalization payments to cover the difference between the increase of the wealth and yours. Should you see a lawyer? Does it snow in Calgary?

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