

“But, I paid for that!”
Splitting Equity in Jointly Owned Real Property:
Why you might not actually be entitled to fifty percent
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It’s a common story. You were in love, but you weren’t married. You lived in a small rented apartment. One day, one of you said, “Hey, wouldn’t it make sense for us to buy?” And the other one said, “Why, yes, it would! That way, we could build some equity, rather than throwing rent money into a black hole and getting nothing in return!” So, you bought a house together. Maybe one of you paid the entire down payment, or maybe you split it. Maybe one of you paid more per month towards the mortgage based on a higher salary, but the other one invested hours of time and effort completing do-it-yourself renovations and creating a landscaping masterpiece that was the envy of all the neighbors. In any event, you had your house, and the mortgage was paid every month, and you had great landscaping, and everything was happy because you were in love...

...until one day, when you were no longer in love.

This is an all-too-common situation, and it can be daunting and frustrating for joint owners—who are often already dealing with the emotional impact of a breakup—to figure out how to disentangle their respective interests in a piece of real property. Many people mistakenly believe that solely by virtue of having their name on the deed, they are entitled to fifty percent of the equity regardless of how much money or effort they have put into acquiring and maintaining the property. That, however, is not the law. Instead, the equity is split based on a number of factors, including each person’s contributions to the acquisition, maintenance, repair, preservation, improvement, and appreciation of the property, as well as the duration of time each person occupied the property, any agreements the parties entered into in relation to the sale or other disposition of the property, any detriment caused to the property, and any tax consequences the parties may face.

Put simply, it will be necessary to assign a value to each person’s contributions towards the acquisition of the property, as well as their actions that added value to (or in some cases—particularly if one party is the type of person who likes to punch holes in walls—subtracted value from) the property, be they monetary contributions or contributions like do-it-yourself renovations or landscaping. Contributions that do not add any value to the property itself will not be considered. So, if one person regularly paid for groceries, utility bills, clothing, or the car the other person drove, those factors might not necessarily translate into an entitlement to equity in the property. Once each person’s contributions to the property have been established and valued, they will be translated into percentage interests in the equity.

Some aspects of this process can be tricky. First, it’s important to note that just like anyone selling an interest in real property, a person in this situation may not always get his or her full investment back. Also, it may or may not be possible for one person to keep the property, depending on that person’s ability to buy the other person out. Depending on the circumstances, creative arrangements (like payment over time) may be workable in an effort to ensure that the property does not have to be sold to a third party. Then, of course, there are the technical aspects

of the transfer of one party's interest in the property to the other, which often require careful attention and involve costs that may reduce the equity being fought over. For example, real estate commissions and refinance costs would lower the "cash" available in a transfer or cash-out refinance of the property.

All in all, while complicated, this process does not have to be painful. In many cases, it is not necessary for the parties to actually resort to formal legal action (called a Petition for Partition) in order to sort out their respective interests in the property. Particularly where both parties are represented by counsel, resolutions to this type of issue can often be reached via negotiation, which is much less costly—in terms of money, time, and emotional capital—than formal legal proceedings. Legal representation is especially useful where the relations between the parties are emotionally charged—as they often are after a breakup—which can sometimes prevent one or both parties from approaching the situation with a clear head.

So, if you were in love, and you bought a house, and now you're not in love, consult an attorney to help you navigate this process. These situations are very fact-sensitive, and you will likely need advice tailored to your specific situation.