



THE ACCIDENTAL BRIDE

Think you and your live-in guy aren't truly committed?

Try splitting up and you may be surprised by what the law says
By Michele Sponagle

"I don't believe in marriage," my friend Marissa*, who's a successful stockbroker, announced to a group of friends one night over cocktails at a downtown Toronto lounge. "I just don't want all the hassles that come with it—like divorce," she added. That comment struck me as funny, since Marissa's boyfriend, a night manager at a pizza joint, had been living with her for four years.

"Guess what?" I chimed in. "In the eyes of the law, you *are* married for all intents and purposes. What's yours is his; what's his is yours." Her face went white and her jaw dropped. "Congratulations," I said. "You're accidentally married."

It's amazing how few women know

that cohabitation can put you in a similar position as a legally wedded wife—for better or worse. Living together seems like a more attractive option than marriage for many. In fact, the 2006 Statistics Canada Census report says that 10.8 percent of couples are common law, compared to just 3.8 percent in 1981, when the government started counting cohabiting twosomes. What you should know, though, is that in those intervening 25 years, a lot has changed.

"The legal differences between marriage and cohabitation are melting before our eyes," says **Lloyd Duhaime, a family law lawyer in Victoria and the creator of Duhaime.org, a legal-information site.** "Those differences are getting smaller and smaller." And >

depending on which side of the financial side of the fence you sit—whether you're the have or the have not—this could potentially be good news or your worst nightmare.

For a woman with a good job who has assets such as a house, a business or a hot BMW convertible, her hooking up with a sensitive songwriter who has only a guitar and some lyrics written on a cocktail napkin to his name puts her at risk financially. If they split up, he has a legal claim to a portion of her pension money and,

ship." Oh, those romantics!

Meanwhile, in Ontario, the Family Law Act says you have to be cohabitating for three *continuous* years or have a child together. So if you're in a split-up-get-back-together-split-up cycle like Pamela Anderson and Tommy Lee, then depending on the circumstances ("I need some time to think" versus "I hate you, goodbye, and I'm taking all my Jimmy Choos with me"), you could lose the grounds to make claims for spousal support.

In Quebec, the rules shift slightly

utes of the province in which you live, visit your local law library or consult a lawyer with expertise in family law. As Duhaime points out, "Before you reach [that threshold], it's a good time to ask yourself some important questions, such as 'Am I going to make it to the finish line with this person?'"

If you prefer not to keep a vigilant eye on the calendar, there's another way to navigate these legal waters: you and your beloved may benefit from each hiring a lawyer to draw up—then both of you sign—a cohabitation agreement that puts on paper how you will handle the division of property, spousal support and other issues.

Jacqueline Peeters, a lawyer specializing in family law with the Toronto firm Birenbaum, Steinberg, Landau, Savin & Colrairie, suggests making it a collaborative process, using the opportunity to discuss important financial issues. "It may be difficult, but it's better for everyone if there is clarity," she says.

Know, too, that this can be done at any point during your relationship—10 years into it or just 10 months. Guaranteed, this will supersede, or take precedence, over the provincial and federal laws in place.

Jennifer*, a 31-year-old marketing consultant, understands the benefits of just such an agreement. She and her fiancé, a science teacher, bought a house, financed largely with money Jennifer received as an inheritance. Then, they parted ways. Fortunately, they had signed a cohabitation contract that addressed the money imbalance in the financing, so both parties got what they thought was fair when they sold the house. "It was an emotional time," Jennifer recalls. "Even though it was an amicable split, a signed cohabitation agreement meant there was one less thing to worry about as we prepared to go our separate ways."

Of course, we would all much rather think happy forever-and-ever thoughts than ponder what happens when a relationship is over. But, as Duhaime puts it, "If there's no signed agreement, there is a lot of bitterness and sadness; [people] are not in an emotional state to negotiate. And the lawyers make a lot of money." □

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perhaps, an interest in the home she bought, not to mention she may be exposed to spousal support as well. Consider that good reason to rip off those blinders of love when it comes to playing house.

The most important thing to determine first is, based on where you live, the length of time outlined by law that dictates when you've gone from simple shacking up to actually living common law. And exactly where that legal threshold lies varies on who's looking at the relationship. For the purposes of your Canada Pension Plan and income tax, the Canadian federal government considers you common law after living together in a conjugal relationship for at least one year. Provincial governments, however, hold the lion's share of jurisdiction over cohabitation laws and each has its own version.

In British Columbia, you're considered to have crossed the legal threshold after at least two years of a "marriage-like" relationship, and the legislation only implies it to be continuous. In the legal language of Alberta, on the other hand, you're not "cohabitating" at all. You're considered to be in "an adult interdependent relation-

once again. In that province, the government calls living together a "de facto union." Those couples do not have the same rights as married folks under the Civil Code of Quebec, regardless of how many years they've been cohabitating, or, um...defactoing.

But here's a potentially scary twist: let's say you and your cohabitating guy spend time at the cottage you purchased before you met him. He renovates it; then, later, you split up. Even though your name is on the deed, he can say he's entitled to a share of the cottage. He could argue in court that you benefited from his efforts. In legal speak, some provinces may say he has a "constructive trust." It's a wild card that can make the dissolution of a relationship complicated and expensive if he tries to make a legal case for ownership and you fight it.

"On the day your common-law relationship begins, you might as well have a party because your life has changed," says Duhaime. "It's important to make a conscious decision to go or not to go over that [common-law] threshold." Ways to find out where that threshold lies? Do an Internet search of the family law stat-

