

How seniors moving in together can protect their retirement savings



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Rising rates of divorce among seniors suggest they may need a refresher about some of the facts of life.

Here's one: Consider the co-habitation agreement if you decide to move in with someone rather than getting remarried. Keep your retirement savings safe.

At the Shulman Law Firm in Toronto, they notice that divorced seniors are increasingly choosing to live with new partners rather than get remarried. Ron Shulman, the firm's founder, wonders if these seniors are operating under the misconception that there are no worries about a division of property when a common-law relationship ends.

In Ontario, there is no legislated requirement that common-law partners divide their property if they split up, Mr. Shulman said. Married couples generally share the value of their property when they divorce or separate, while common-law partners generally take back what they had when they started the relationship and what they put in while together (some other provinces are similar).

Still, there are exceptions where it's possible for a common-law spouse to claim that a partner's assets should be shared. Mr. Shulman said this kind of claim would depend on the extent to which couples have joined their finances and life goals. For example, do they have common bank accounts, have they co-mingled their assets, pooled resources for common goals or made contributions to each other's property of a financial or non-financial nature?

"These cases are notoriously difficult," Mr. Shulman said. "They are expensive to litigate and they're better avoided, or negotiated."

His suggestion on how to avoid arguments over assets is a co-habitation agreement. Think of this document as a kind of prenuptial agreement for couples that will live together. "I usually recommend to clients that they look at this as not being about what will happen if you break up, but more as an insurance policy to maintain stability," Mr. Shulman said.

Co-habitation agreements have become common enough that there's a CohabitationAgreement.ca website offering three levels of service at \$59, \$749 and \$4,499. Mr. Shulman estimates the cost at between \$2,000 to \$5,000, depending on the complexity and the amount of financial disclosure that is required. He said the document would specify what belongs to who in a relationship and can also say which assets would go to whom if the relationship breaks down.

Co-habitation agreements are relevant for common-law couples of all ages. But they make particular sense for seniors, particularly those who have substantial savings for their retirement. A claim to share assets launched by a former common-law spouse could devastate these savings, Mr. Shulman said. A co-habitation agreement can also protect seniors against predatory relationships where someone is after their wealth.

Suggesting seniors consider a co-habitation agreement when moving in together might sound like niche advice for a small minority. But divorce rates are on the rise among the broad population and for seniors in particular. Meanwhile, there's a growing acceptance across the broad population of living together rather than marrying. Recent census data shows that a little more than 20 per cent of all couples lived together in 2016, more than triple the level of 1981.

Mr. Shulman said his firm has in recent years seen parents coming in to inquire about the ins and outs of prenuptial agreements for adult children who are getting married. Now the firm is starting to hear from adult children concerned about parents in common-law relationships.

These children are concerned about parents losing their financial independence if the relationship ends, but there could be more to it than that. An aged parent exiting a common-law relationship might have to give up assets that the children were expecting. Or, a division of property might affect financial help that aged parent was able to provide.

Urged by their children to have one of these agreements drafted, some seniors seem surprised. "Their question is, 'Why do you think I need a co-habitation agreement? I'm not married, we just started living together,'" Mr. Shulman said. "And then I explain it to them and they say, 'Wow, I didn't know that.'"