Couples’ Finances Can Get Complicated After Lockdown Move-Ins

DECEMBER 15, 2020

The pandemic has had a polarizing effect on many aspects of life, love included.

In some cases, the shock pushed apart relationships already under strain. But it also brought some people together faster than they ever could have anticipated, as many hastily shacked up in a rush of lockdown-induced intimacy.

Be careful and take a few precautions. Even with the best legal planning, your assets may still take a walk if you split up.

Of course, I’m sure you don’t plan on splitting up — or fighting over your assets. But close to half of the marriages end in divorce, and non-married couples call it quits, too. The property rules that will govern your financial split in the U.S. are exceedingly arcane. Every state has surprising statutes that are neither intuitive nor necessarily fair.

“I tell my very wealthy clients, ‘Don’t even go on a date without getting a release first,’” said attorney Sandra Mendell of Jaffe Family Law Group in Los Angeles. “I’m kind of joking, but with some people it’s true.”

A partnership can dump your assets into a blender of legal subjectivity. For instance, if a married Californian refinances her home, her spouse gains some ownership, even if she owned the property outright. That’s because all proceeds from loans are considered “community” property in California. Totally intuitive, right?

To help protect you from this expensive, emotional morass, we asked divorce lawyers for their best advice on how to protect you from any surprises.


Photographer: Getty Images

Get a cohabitation agreement, immediately.

The minute you think you'll be moving in together lay out your financial relationship with your partner — in a contract.

Without something written down, your relationship can later be defined by the whims of state law, the mood of a judge or arbitrator, and the emotional functioning of your ex. Yes, the conversation you'll need to have to get this process started will be awkward, but it will protect you both.

Let's say that before getting married, you dated someone for four years and shacked up. In one nightmare scenario, your ex could claim that you were in a "domestic partnership" or a "common law marriage" while dating and pursue a cut of your income and asset appreciation. You could potentially avoid all this with a one-page contract.

Though you can draft your own cohabitation agreement based on an online template, don't do it. These agreements can be contested on grounds that one partner didn't fully comprehend or was manipulated into waiving rights. If both of you are represented by separate attorneys, the agreement will be more difficult to contest. Also, you cannot write a smart agreement without thoroughly understanding your state's approach to your particular income and assets, and an attorney consultation would be helpful with that.

First comes love, then comes your prenup.

Let's say you've lived together — with a cohabitation agreement in place, of course — and now want to tie the knot. Graduate to a prenup. Many cohabitation agreements include variations of "what's mine is mine, and yours is yours, except for XYZ"; prenups are usually a different enchilada, specifying financial arrangements for the marriage, such as who pays which bills or pockets tax credits, as well as specific outcomes in distinct scenarios, such as asset distribution after death.

The guiding principles that lawyers offer for prenups are less than obvious, starting with geography. If you own property or reside in multiple states, your prenup should note which state's laws you would like to prevail in any separation proceedings.

Keep it safe with a postnup.

Postnuptial agreements — contracts you enter into after you're married — provide a formal way of articulating who owns what in a marriage.

Experts recommend revisiting postnups every time you significantly shift assets, explicitly noting ownership. For example, when taking out a loan, you should ask the lender for a letter stating that the funds are for your separate, non-marital property and that your separate, non-marital property was used as collateral.

While not foolproof, this strategy creates an ongoing paper trail of your intentions and confirmation of your spouse's ongoing agreement.

Photographer: Daniel Acker/Bloomberg

Do not pay for most or all of your shared home.

Many couples buy a home. But generosity from a partner in down payment is sometimes synonymous with handing over half the home's value down the road.

Nancy Chemtob, an attorney at Chemtob Moss Forman and Beyda in Manhattan, has handled the divorces of celebrities including Bobby Flay, Star Jones and Mary-Kate Olsen. She says the most common mistake couples make with housing is using pre-marital money to purchase a primary residence. Suddenly, the funds become comingled, blurring ownership.

“If you must, my advice is to draft a postnuptial agreement that says, ‘I own two-thirds of this property outright, and the remainder is marital,’” Chemtob said. Also, state the ownership split on the deed. If feasible, you could split the down payment evenly and sign a post-nuptial agreement stating that the property will be evenly divided in the event of a divorce.

Understand the ramifications of big gaps in incomes or assets.

Main breadwinners and non-working spouses typically feel most financially violated by divorce, said financial planner Dana Levit of Paragon Financial Advisors in Newton, Massachusetts. If assets or incomes begin to diverge, a trip to the lawyer’s office is essential. Generally speaking, if your incomes and assets are roughly even, a brutal asset split or alimony scenario is less likely.

Not all of these suggestions are easy. But they can help prevent a divorce from becoming a litigious trash fire.

Take the (relatively) smooth divorce of Jordin Wiggins, a 32-year-old naturopath from Toronto. She recently split with her partner of nine years.

“Our contract said that we’d leave with whatever we came in with, and no spousal support. So we divided the profits on our home and went our separate ways,” she said.

Her legal fees cost $2,000. Wiggins was keen to have a prenup because she owns a Toronto women’s health clinic called Health Over All, and wanted to keep 100% ownership.

“I know so many people who stay in relationships because they fear how divorce will affect their business,” she said. “We all think we won’t be the statistic. But we are.”

You can do this. Good luck out there.