

Unmarried couples need to plan too

By A. Paul Firuz & Tiffany R. Gorton

While Washington doesn't recognize common law marriage, our state's ever-developing "committed intimate relationship" (CIR) doctrine can significantly affect the rights of unmarried couples – in life and in death.

When a CIR exists, Washington courts may conclude that, upon parting ways (whether during life or upon death), an *equitable distribution* of property acquired during the relationship must take place. This equitable distribution is often characterized as the prevention of one partner's unjust enrichment when a relationship ends.

Washington's CIR doctrine has evolved in such a way that property acquired during a CIR is *presumed to be* like a married couple's "community property," and is treated much like community property when a relationship ends (whether by death or separation). In a published 2017 case, Washington's Division 1 Court of Appeals even used the term "community property" to describe property acquired during a CIR—despite the fact that the couple had never married.

That is, without taking any legal action, a couple can alter the character of assets acquired during their relationship if the relationship is later deemed to be a CIR under the following five-factor test adopted by Washington's Supreme Court:

1. Continuous cohabitation
2. Duration of relationship
3. Purpose of relationship
4. Pooling of resources and services for mutual benefit
5. The parties' intent

Cohabitation is the real hallmark of CIRs although it's not the end to the court's inquiry regarding the significance of a relationship for purposes of determining a party's interest in property acquired during a couple's relationship. Cohabitation is the easiest factor to identify with some clarity. Notably, numerous cases have found "continuous cohabitation" despite periods of separation.

Despite what many might assume, keeping separate bank accounts and paying bills separately is not necessarily proof that the parties did not pool resources. In a 2018 case, the Court of Appeals found that a CIR existed even though the parties maintained separate accounts. The court found that pooling "at least some" resources was sufficient evidence to meet the pooling test.

The parties' purpose and intent is often very hard to prove when one partner is deceased. Courts have made clear that sexual fidelity is not solely determinative of the parties' intent, and held that "infidelity alone does not preclude" the finding of a CIR.

The fact-intensive nature of these cases makes them extremely time consuming and therefore expensive to litigate. If you are (or may be) in a CIR, a penny of good planning may save a pound of legal fees in quarrels about whether a CIR existed and, if so, what each interested party's rights are in any property belonging to the deceased person.

Parties who are (or might be) in a CIR are free to enter into agreements about the status and character of their property. These agreements can look a lot like prenuptial or postnuptial agreements, spelling out each partner's separate assets and what (if any) property the couple considers to be jointly owned. For property considered to be jointly owned, further steps should be taken to confirm that status beyond the agreement—for example, making sure that title lists both partners, or making sure each partner's will gives their interest in that property to the other partner.

If one or both partners are reluctant to reduce their agreement regarding the status of their property to writing, then both should have language in their wills or other estate planning documents making their intent and directions regarding distribution of their assets clear.

Washington courts have held that a CIR ended when one party expressed his unequivocal intent to end it. No published Washington case deals with an alleged CIR where one party has clearly expressed intent *not* to form one, probably because such cases don't make it to trial.

Many unmarried couples who live together and are unmarried are surprised that the law creates certain presumptions giving each partner equitable rights in property acquired during the relationship. Those couples who do not make their intent clear face uncertainty and possibly significant expenses (and even litigation) to determine each party's rights following the death of one partner. Proper planning spares the surviving partner and other loved ones the financial and emotional pain of trying to sort things out in the wake of a death.

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