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Cohabitants Can Acquire Property Rights as if They Were Married

Popular culture instills in us Washingtonians the concept of “common law marriage.” The concept goes something like this: if a man and a woman live together for more than seven years, then they have a “common law marriage” that might entitle each to certain laws or rights or responsibilities *as if* they had been legally married. In fact, Washington state does not recognize any common law marriage and there is no “seven-year” test. Instead, Washington courts have applied rules to couples living together (cohabitants) in an intimate, committed, relationship that can allow the cohabitants to acquire community property rights (or more precisely, rights similar to community property rights). However, those rules are not just relatively new and unknown in our popular culture, but there is no bright-line test or application, making it a trap for the unwary. For the enlightened, it is a planning opportunity.

In brief, the concept of “community property” is simply that all property acquired during marriage is deemed to be community property, owned one-half by husband and one-half by wife. Anything acquired before marriage, after marriage, or by gift or inheritance at any time, is separate property.

For nearly a century, legal practitioners in Washington believed that all property acquired by unmarried cohabitants belonged to the holder of legal title, and was not subject to community property rights. It made sense that, because the cohabitants were not married, there could be no community property rights and no claim to any right in separate property. There were numerous court-constructed exceptions to the general rule. But, in 1984, the case of *In re Marriage of Lindsey*, discarded the presumption and decided that courts must examine the couples’ relationship and the property acquired. In short, Washington law evolved with regard to committed, intimate relationships to look beyond how property is titled, and instead examine the property ownership as if the partners had been married.

As the *Connell* Court put it, these rules apply where couples have a marital-like (meretricious) relationship: is a “stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist.” There are five relevant factors that courts use to determine if a marital-like relationship exists: (1) continuous cohabitation; (2) duration of the relationship; (3) purpose of the relationship; (4) pooling of resources and services for joint projects; and (5) the intent of the parties. To add to the complexity of the application of this rule, Washington courts have further decided that these factors are not exclusive. Rather, the factors and additional evidence are meant to reach all relevant evidence helpful in determining whether a meretricious relationship exists. And, where a meretricious relationship exists, the courts have applied a presumption that the property acquired during the relationship is owned by each party. This is why it is a trap for the unwary.

If a court finds that a meretricious relationship exists then community property principles can be applied. This means that there is the potential that your cohabitant can acquire rights in the property titled solely in your name that you presumed was owned entirely by you and subject to your exclusive control. It means that a court has the equitable power to divide and distribute property acquired during the relationship regardless of title to the property.

It's also important to note that the concept of a meretricious relationship applies to same-sex relationships the same way it applies to male and female relationships. And, to be clear, a meretricious relationship does not exist where the two cohabitants are not engaged in an intimate, committed relationship (like roommates).

The planning point here is to consider an agreement that outlines the rights and expectations of the parties that cohabit – a Cohabitation Agreement. This is a contract akin to a pre-nuptial agreement. And, it is necessary to ensure that the parties' intent and understanding of their legal rights are not thwarted by Washington law.

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