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## Unmarried couples and their property, or, Who gets the pots and pans?

*If income or assets are large, thoughtful planning is needed before intermingling property ownership on a scale larger than toothpaste or the cookware set.*

BY BRADLEY J. WOODWORTH, Esq.

*NOTE: No two legal situations are the same. This column discusses only general legal principles. For specific advice, consult a qualified attorney.*

When a married couple divorces or legally separates, the law provides that their property — real property, personal property and marital debts — be divided "equitably" between the couple, with due regard for the

### Counsel

various factors that will assure that "equity" is accomplished. The law also will assist unmarried (yes, even gay) couples in dividing their property and debts if the parties are unable to agree on how to do so. However, the goal of the court is *not* to create "equity," but rather to enforce what the court finds to be the *intent of the parties*. This rule has many practical consequences for unmarried couples, some of which are discussed below.

Questions may arise as to property that each party brought into the relationship, or as to property acquired jointly, or individually, during the relationship. Also, debts of the relationship can sometimes be considered. I once was called upon to untangle the property rights of a former couple in which title to their real pro-

perty had been taken jointly. The party who had made the payments on a new truck had transferred its title to the other. When the relationship unexpectedly ended, one of the partners wanted "settlement money" to release his interest in the real property and the truck. The question of title to the vehicle was critical, since one of the parties (the one without title) had guaranteed the payments and was liable to the lender, even though he did not have title to the vehicle and could not sell it to pay off the loan. Planning could have avoided these problems.

The key to a court division of the joint property of an unmarried couple is the intent of the parties *at the time they entered into the relationship*. Did they intend to pool all of their resources? Was one person going to pay everything? To make this determination, courts will look at the facts of the situation: did one party pay for everything; were there written agreements; were there oral agreements; how was particular property treated by the couple? It can become tricky to sort out who intended what, especially if the parties never gave it much thought, much less expressed their intentions in writing.

#### Real property

Several months ago, I wrote about the Oregon case *Ireland v. Flannigan* in which a same-sex couple went to court to determine their respective interests in the house which they had bought together. Title had been placed in the name of only one of the women, although each had contributed to the down-payment. Each party had a different explanation as to why title was placed only in one name, so the judge found that each of the parties was an unreliable witness whose testimony would need corroboration in order to be believable. The court considered all of the factors in the relationship and the testimony of one party that, at the time of purchasing the property, they intended to pool all of their resources and have "a marriage." Therefore, the court found that the parties intended to share equally in ownership of the real property, and, accordingly, that the one partner whose name did not appear anywhere on the property had a half interest in it.

Because real property is often the largest investment that most individuals make, particular thought and care must be given to a property transaction involving two or more unmarried individuals. Although it is possible that luck and chance will protect your intentions, it is more likely that qualified legal advice will do so.

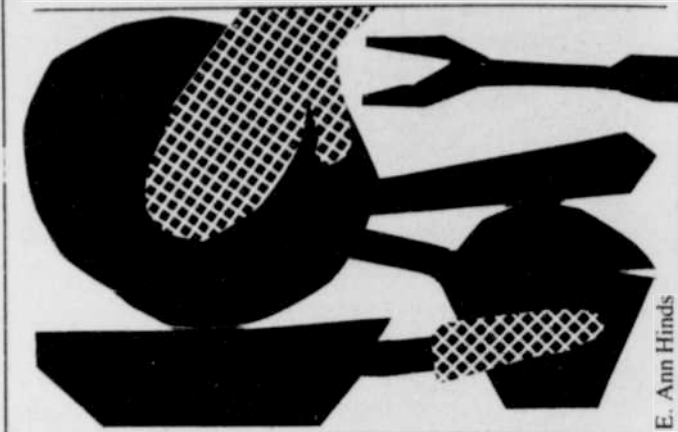
#### Gifts

There may be unintended consequences to acts of generosity that are unaccompanied by careful thought and planning. Between married spouses, and between parents and their children, the law presumes that transfers of property are gifts. This is not so between unmarried persons, including those who have a long-term relationship. Rather, the party seeking to establish the existence of a gift has the burden of proving that it is actually a gift, and must do so with "clear evidence." There may be tax consequences if the value of the gifts any one year to any one person is greater than \$10,000. Large gifts (those approaching or exceeding \$10,000 in value) should be well documented. You should check the tax consequences of such major gifts with your tax accountant.

#### Real property

In Oregon, unmarried persons *cannot* own real property jointly. (Only a husband and wife can do so.) However, a particular form of ownership, similar to joint ownership, is the so-called "survivorship estate." In general, pro-

perty held in this manner passes outside your will or probate. Instead, it would vest directly in your lover if he or she survives you. There are also other ways in which real property can be held by two or more persons. One should always obtain professional advice when taking title to real property.



E. Ann Hinds

#### Bank accounts

Many practical problems are encountered in dividing an unmarried couple's joint bank accounts. Even though bank signature cards usually contain language purporting to state the rights of the parties to the account, these signature cards are not binding on the courts. Often the court will trace the money put into the account and taken out of it, and will try to reach a division that reflects the intent of the parties.

If you maintain only joint checking accounts, be certain to keep a record of your earnings, and of deposits to the account and funds spent from it.

#### Planning for relationships

It can be difficult to discuss economic matters when you are busy falling in love. You might think it to be in bad taste to do so. In my experience, it is not bad taste but, rather, good judgment for a person to consider the effect of a relationship on their assets and estate. If you bring up the subject and your prospective partner becomes angry or is unwilling to make an agreement, then you may wish to reconsider the emotional and economic maturity with which your partner approaches your relationship.

The safest way to protect your expectations about individual and joint property is to put them into a written agreement signed by each of the parties to the relationship. Such "living-together agreements" are valid and usually are enforced by the courts. If a couple is not sure that it wants all of its economic affairs to be intermingled, other terms can be incorporated into the agreement. Your attorney can help you prepare a living-together agreement.

If you are bringing your individual property into the relationship, and also intend to take it with you if the relationship ends, you may wish to identify specifically those items of property that are "yours." When property is acquired during the relationship, special thought should be given to in whom title is placed, with whose funds the purchase is made, and whose names appear on the loan, if there is one. How the couple treats particular items of property also may be considered by the court. If particular property is "yours," then be sure to treat it as yours.

Finally, a will can be a useful means for an unmarried person to assure that all or most of his property will go to his chosen companion rather than pass by law to his surviving blood relatives. Be sure to consult an attorney to prepare your will.

The need for property planning in an unmarried relationship is greater when the parties' affairs are substantial. If your income or assets are large, thoughtful planning is needed before intermingling property ownership on a scale larger than toothpaste or the cookware set. Although lawyers are trained to be paranoid, a legal consultation before you give a lover title to some of your property may well be in order. If you acquire a substantial asset during the term of a relationship, legal advice may also help to protect your intention with respect to that asset.

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