BAR BULLETIN

KING COUNTY BAR

*This is a reprint from the King County Bar Association Bar Bulletin*
November 2019

*Committed Intimate Relationships:*

# They're Not Just for Family Law Practitioners Anymore

***By Hon. Helen Halpert (Ret.)***

Americans are increasingly choosing to live in intimate relationships without being married. Interestingly, the age cohort with the greatest increase in this type of living arrangement are people over the age of 50.[1]

The legal implications for these relationships are very broad and extend far beyond the division of property at the end of a relationship. Division of property upon the death of one partner, creditor/debtor rights and potentially even tort liability all may be impacted by the existence of a committed intimate relationship (CIR).[2] To cite just one example, although the laws of intestate succession do not apply to parties in a CIR, a court, at the death of one partner, is to equitably divide property acquired during the relationship.[3]

This article is intended to serve as a primer for those attorneys who do not practice primarily in family law, as well as to highlight some recurrent issues for family law attorneys.

Since the abolition of the *Creasman* presumption by the Washington Supreme Court in the landmark case of *In re Marriage of Lindsey*, trial courts are to "justly and equitably" distribute property acquired during the relationship when a CIR ends, either by death or dissolution.[4] This requires a three-step analysis:

(1) a determination of whether a CIR exists;

(2) a determination of "what interest each party has in the property acquired during the relationship;" and

(3) a determination of what constitutes a "just and equitable distribution of such property."[5]

Although steps two and three can, at times, present challenging issues, the most common issue in CIR litigation involves the first step: Is the relationship before the court, in fact, a CIR? It is that question that will be discussed in this article.[6]

As stated by the Court in *Connell*:

> A meretricious relationship [CIR] is a stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist.
>
> Relevant factors establishing a meretricious relationship include, but are not limited to: continuous cohabitation, duration of the relationship, purpose of the relationship, pooling of resources and services for joint projects, and the intent of the parties.[7]

The five factors are not exclusive, and no one factor is necessarily predominant. The factors are not to be construed in a "hyper-technical" manner. The inquiry as to whether a CIR exists is dependent on the specific facts before the court. The factors are "meant to reach all relevant evidence helpful in establishing" whether a CIR exists.[8]

Finally, unlike in a statutorily created, state-registered domestic partnership, a CIR may exist even if one or both parties is married to another person.[9]

*Continuous cohabitation*: Parties may still be in a CIR, even if at times they live apart. Thus, in *Morgan v. Briney*, an eight-month separation during a 20-year period of cohabitation did not prevent a finding that the CIR started on the date cohabitation initially began.[10] In addition, if periods of living apart were required for practical purposes, such as education or career development, continuous cohabitation may still be found.[11]

*Duration of relationship*: The relationship need not be "long term," and — particularly when the parties ultimately marry — a relatively brief period of premarital cohabitation may suffice.[12] On the other hand, even a concededly long-term relationship may lack the hallmarks of a CIR. Nonetheless, given the equitable roots underlying the CIR doctrine, the length of the relationship is often a significant factor.[13]

*Purpose of the relationship:* As a general matter, the purpose of a CIR is to establish a loving, mutually supportive, intimate, cohabitating and caring relationship. That is, the purpose is to enter into a marriage-like relationship. Continuing physical intimacy is not required.[14] Conversely, roommates who engage in a physical relationship may remain simply roommates, absent other evidence that supports a finding of a CIR.[15]

Cohabitation while rearing a child together is strong evidence of a CIR.[16] However, Washington has not adopted the ALI Principles of the Law of Family Dissolution, section 6.03, American

Law Institute (May 2002), which, in essence, suggest that a CIR be conclusively presumed from joint parenting and cohabitation.[17]

*Pooling of resources and services for joint projects*: Pooling of resources may be found even when the parties maintained separate accounts, with each partner paying some of the household bills from a separately maintained account. Labor toward a community goal, such as child rearing or house remodeling, is also a significant factor. A joint account is not required.[18]

*Intent of the parties*: The parties must mutually intend to be in a CIR.[19] Such intent may be established by the couple holding themselves out as a family, or one partner enrolling the other in employer-provided health insurance or naming the other as the beneficiary in a life insurance policy. Unlike in a marriage, evidence of infidelity may be relevant to establish lack of intent to enter into a CIR, although evidence of infidelity is not conclusive.[20] Of course, evidence that establishes the other *Connell* factors often supports an inference of mutual intent to enter into a CIR.

*Enforceability of agreements regarding a CIR*: The parties are free to agree to keep some or all of their property out of the CIR. Such agreement however, must meet the substantive and procedural fairness requirements of *In re Marriage of Mattson*.[21]

Finally, because a CIR requires mutual intent, when one partner unequivocally indicates a desire to terminate the relationship, the CIR terminates on that date.[22]

When the Court in *Lindsey*[23] recognized that both partners to a long-term, stable, marital-like relationship were entitled to an ownership interest in property acquired during the relationship, it did so as a matter of equity. Perhaps because of the equitable roots of the CIR doctrine, it is not always possible to tease out which of the five *Connell* factors will be given the most weight.

Vexing issues still exist, such as the difficulty in determining the start date of a CIR when the parties, as perhaps is typical, "drift" into a committed relationship and become more and more enmeshed over time. Finally, in *Pennington*,[24] the Court left open the possibility that even if the parties' relationship did not qualify as a CIR, other theories of relief available prior to *Lindsey*, such as implied partnership, resultant or constructive trust, or unjust enrichment, might still be available. ■

*Hon. Helen Halpert (Ret.) retired from the King County Superior Court in 2018 after serving on that court for nearly 19 years. She currently is a mediator/arbitrator at JAMS, specializing in family law cases.*

[1] Renee Stepler, "Number of U.S. adults cohabiting with a partner continues to rise, especially among those 50 and older," Pew Research Center (April 6, 2017): *https://www.pewresearch.org/fact-tank/2017/04/06/number-of-u-s-adults-cohabiting-with-a-partner-continues-to-rise-especially-among-those-50-and-older/*.

[2] Washington courts previously used the term "meretricious relationship." Because of the pejorative connotation of that term, the term "committed intimate relationship" is now used. *See Olver v. Fowler*, 161 Wn.2d 655, 657 n.1 (2007), deciding that community property concepts apply by analogy upon the death of one partner and that the Simultaneous Death Act applies to CIRs, but declining to address, under procedural posture of that case, whether principles of joint tort liability apply to parties in a CIR. *See also Witt v. Young*, 168 Wn. App. 211 (2012).

[3] *In re Estate of Langeland*, 177 Wn. App. 135 (2013) (case also determined that the presumption that property acquired during a CIR is jointly owned prevails over the conflicting presumption that inventory of property prepared by the personal representative of the deceased partner is presumed correct). *See also In re Amburgey and Volk*, 8 Wn. App.2d 779 (2019) (judicial estoppel did not preclude one partner from asserting an equitable interest in property acquired during the CIR at the end of the relationship, even though she had failed to list property held in her partner's name in her bankruptcy filing).

[4] *Creasman v. Boyle*, 31 Wn.2d 345 (1948). It is presumed that parties to a CIR intended ownership of property acquired during the relationship to follow title, absent evidence to the contrary. *In re Marriage of Lindsey*, 101 Wn.2d 299 (1984).

[5] *Connell v. Francisco*, 127 Wn.2d 339, 349 (2007).

[6] A comprehensive discussion of Washington case law involving CIRs can be found in Professor Tom Andrews' recent law review article: T. Andrews, "Cohabiting with Property in Washington: Washington's Committed Intimate Relationship Doctrine," 53 Gonzaga L. Rev. 203 (Dec. 2018).

[7] 127 Wn.2d at 346 (citations omitted). Because the analysis is so fact specific and also because reported opinions are relatively sparse, the author has taken the liberty of referring to pre-2013 unpublished opinions, although citation to such opinions to a court is not authorized. GR 14.1.

[8] *In re Marriage of Pennington*, 142 Wn.2d 592, 602 (2000).

[9] Compare RCW § 26.60.030 with *Vasquez v. Hawthorne*, 145 Wn.2d 103, 107 (2001).

[10] *Morgan v. Briney*, 200 Wn. App. 280 (2017); accord *Walsh v. Reynolds*, 183 Wn. App. 830 (2014).

[11] *Fleming v. Spencer*, 47872-9-1, 2002 WL 171249 (Unpub. 2002).

[12] *In re Marriage of Lindsey*, 101 Wn. 2d 299 (1984) (issue in dissolution was whether property acquired pre-marriage, but during a two-year period of cohabitation, was before the court for division).

[13] *Connell*, 127 Wn.2d at 346.

[14] *Muridan v. Redl*, 3 Wn. App.2d 44, 61–62 (2018) (because of a medical issue, no physical intimacy was possible for the majority of the time the couple cohabitated).

[15] *Moseley v. Matilla*, 534971-1-I, 2005 WL 1178063 (Unpub. 2005).

[16] *Walsh v. Reynolds*, 183 Wn. App. 830 (2014).

[17] *Hobbs v. Bates*, 51463-6-I, 2004 WL 1465949 (Unpub. 2004).

[18] *Muridan*, 3 Wn. App.2d at 57–58; *In re Long and Fregeau*, 158 Wn. App. 919, 927–28 (2010).

[19] *Marriage of Pennington*, 142 Wn.2d at 604; accord, *Hobbs v. Bates*, 2004 WL 1465949 ("[N]either party intended to be married to the other or hold themselves out as being married, and while Hobbs may have intended a meretricious relationship, Bates most certainly did not.").

[20] *Muridan*, 3 Wn. App.2d at 60.

[21] *In re G.W.-F.*, 170 Wn. App. 631 (2012); *Rowe v. Rosenwald*, No. 74659-6-I, 2017 WL 2242301 (Unpub. 2017); *In re Marriage of Matson*, 107 Wn. 2d 479 (1986). A discussion of the enforceability of these agreements is beyond the scope of this article. *See*, generally, Scott Horenstein, 19 *Wash. Practice*, "Family and Community Property Law," § 16.3 (Nov. 2018).

[22] *In re G.W.-F.*, 170 Wn. App. at 647–48.

[23] *See*, *supra*, n.4.

[24] *See*, *supra*, n.8.