

KUTSCHER
HEREFORD
BERTRAM
BURKART

KHBB
Law

HOW A PERSON'S LOVE LIFE CAN COMPLICATE THEIR ESTATE PLAN

A. PAUL FIRUZ

PFIRUZ@KHBBLAW.COM

ESTATE PLANNING FOR WASHINGTONIANS



OUTLINE

1. Community Property
2. Unmarried Couples & the Committed Intimate Relationship Doctrine
3. Special Considerations for “Complicated” Families

I. COMMUNITY PROPERTY



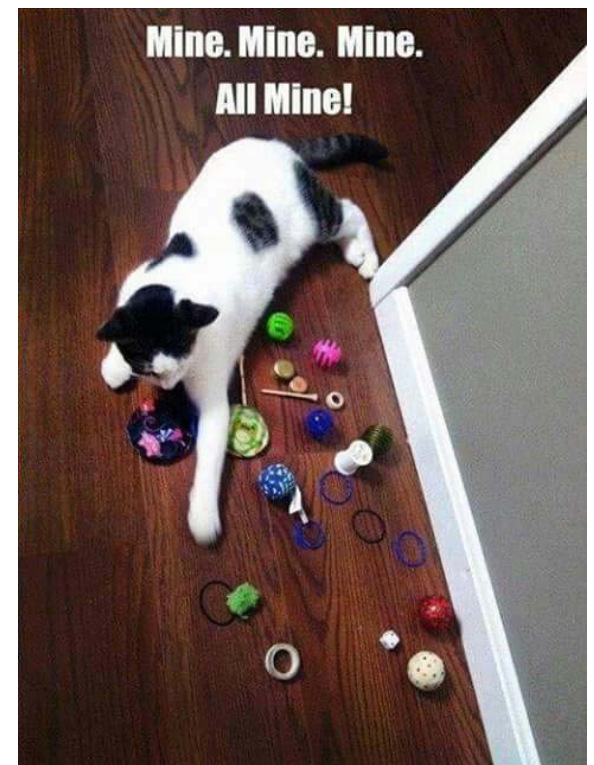
DEFINING COMMUNITY / SEPARATE PROPERTY

Community Property: RCW 26.16.030.

- Generally, all property other than separate property.
- Commonly, all earnings during marriage, regardless of how titled.

Separate Property: RCW 26.16.010 (and .020).

- All property owned before marriage.
- Gifts or inheritances acquired after marriage.
- Separate property should be kept separate to stay separate.



APPLICATION OF COMMUNITY / SEPARATE PROPERTY RULES TO ESTATE PLANNING



**KEEP
AWAY
THATS MINE**

RCW 26.16.030(1) *Neither person shall devise or bequeath by will more than one-half of the community property.*

- If the parties have separate property, make sure it is clearly identified as part of their estate planning.
- **Failure to identify property's character could lead to costly litigation.**

PLANNING FOR COMMUNITY / SEPARATE PROPERTY

- **Separate Property Trust**

- Segregate one partner's assets in a trust that clearly identifies (and preserves) the separate character

- **Agreement as to Status (or Character) of Property**

- Both parties agree about status of property

- **Pre-nup/Post-nup**

- Spouses (or spouses-to-be) agree about character of property during marriage

COMMUNITY PROPERTY: REGISTERED DOMESTIC PARTNERS

- RCW 26.60.015 provides:
 - It is the intent of the legislature that for all purposes under state law, **state registered domestic partners shall be treated the same as married spouses**. Any privilege, immunity, right, benefit, or responsibility granted or imposed by statute, administrative or court rule, policy, common law or any other law to an individual because the individual is or was a spouse, or because the individual is or was an in-law in a specified way to another individual, is granted on equivalent terms, substantive and procedural, to an individual because the individual is or was in a state registered domestic partnership or because the individual is or was, based on a state registered domestic partnership, related in a specified way to another individual. The provisions of chapter 521, Laws of 2009 **shall be liberally construed to achieve equal treatment**, to the extent not in conflict with federal law, of state registered domestic partners and married spouses.
- RCW 26.60.080: registered domestic partners can and do have community property (unless they agree otherwise).

2. UNMARRIED COUPLES



COMMITTED INTIMATE RELATIONSHIPS

- No “common law” marriages.
- Does “community property” doctrine apply to unmarried couples?
 - No, but...

COMMITTED INTIMATE RELATIONSHIPS CREATE PROPERTY RIGHTS

When a relationship is significant enough, courts may find that property acquired during the relationship should be distributed in a “just and equitable” manner at the relationship’s end.

DIVISION OF PROPERTY WHEN COMMITTED INTIMATE RELATIONSHIP ENDS

- **“Just and equitable” = same standard as divorce.**
- **Unlike divorce, only applies to property acquired during relationship.**

UNSPOTTED COMMITTED INTIMATE RELATIONSHIPS CAN CREATE SURPRISING OUTCOMES



WHAT IS “SIGNIFICANT ENOUGH” TO REQUIRE JUST AND EQUITABLE DISTRIBUTION?

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

PROVING/DISPROVING A COMMITTED INTIMATE RELATIONSHIP IS MESSY

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



TO WHOM DOES THIS DOCTRINE APPLY?

- To couples who have never married.
- To pre-marriage period (when couples live together in significant relationships and then marry).
- Committed intimate relationship doctrine survives even after marriage equality.



SAME PROBLEMS AS COMMUNITY / SEPARATE DISPUTES



PLANNING WHEN COMMITTED INTIMATE RELATIONSHIP MAY EXIST

Need some clarity about what belongs to each partner — **before** one of them dies.



DO BOTH PARTNERS NEED TO AGREE?

- One party's clear expression of intent isn't the best option, but is better than nothing and may be enough.
 - *In re Parentage of G.W.-F*, 170 Wn.App. 631, 285 P.3d 208 (2012).

EXPRESSIONS OF INTENT

Could be as simple as:

Our property is held according to title; we both waive any equitable interest that might accrue by virtue of our relationship.

Or in a Will:

I am currently living with Partner. I do not now intend and never have intended that my relationship with Partner should give Partner any rights in my property.

****If my intentions relating to Partner's interest in my property change, I will confirm such change in a separate written document signed by me.***

3. PLANNING FOR BLENDED FAMILIES



ALLOCATING THE MONEY IS IMPORTANT, BUT IT ISN'T EVERYTHING



FIDUCIARIES

Surviving Spouse as Trustee?



“Child A” as POA and PR?



OTHER FIDUCIARY CONSIDERATIONS

How will Trustees be appointed?

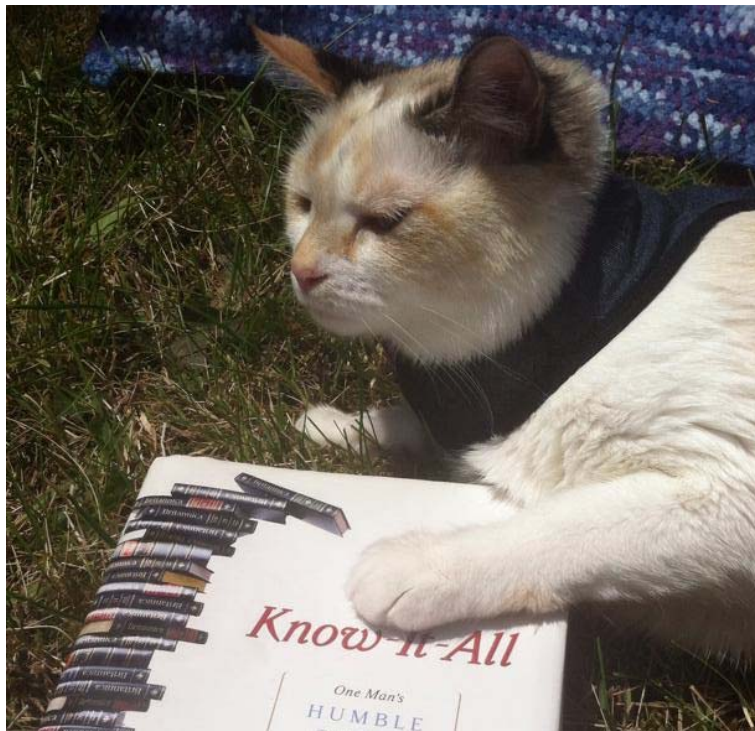
Consider what should happen if surviving spouse (or “Child A”) doesn’t want to serve.

Appointment by:

- By first-named Trustee
- By beneficiary
- By committee



DO POAS KNOW TO KEEP RECORDS?

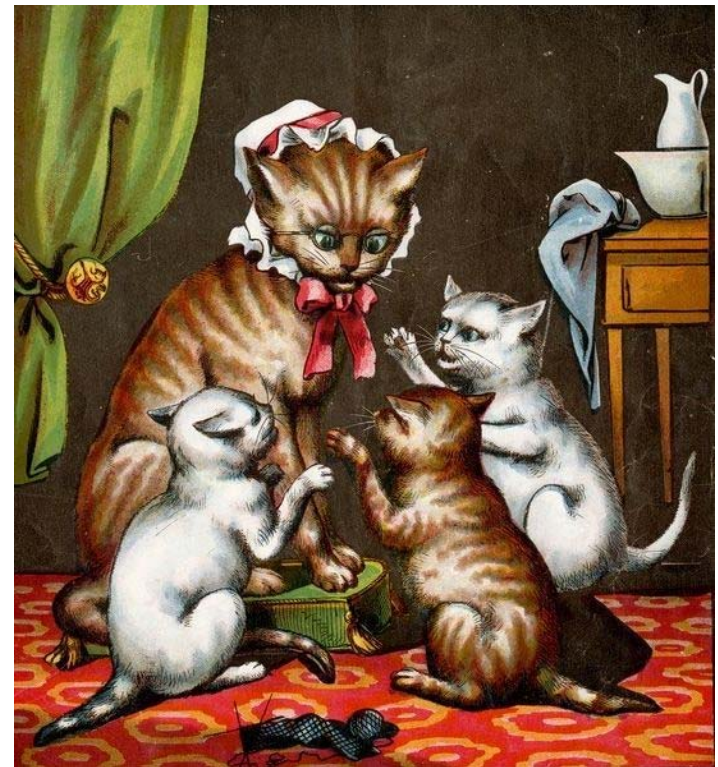


Under RCW 11.125.140, Agents must provide accounting of receipts, disbursements, and transactions to principal upon request, or at principal's death, to PR / successor in interest of Principal's estate.

- Consider adding provisions in POA document itself alerting Agent of record-keeping duty;
- Consider whether Agent should account to others during Principal's lifetime.

OTHER COMMON PLANNING ISSUES

- **Community / separate property issues.**
- **Will this estate plan cause a family feud?**



THANK YOU

A. PAUL FIRUZ

PFIRUZ@KHBBLAW.COM

