FAMILY LAW FORUM

PROPERTY ISSUES FOR NON-MARRIED COUPLES

Introduction

Married couples have the benefit of law governing the dissolution of marriage to provide a process for dividing any property accumulated by the couple. Division of property owned by unmarried couples is a mystery to many of us who work with divorcing couples in family court. This article aims to enlighten those who may be curious how assets are divided when an unmarried couple separates as it is completely different for couples who cannot or choose not to marry.

It is fairly common knowledge that in Minnesota you do not acquire rights simply because you live together. Minnesota does not recognize “common law marriage.” The goal with dividing property for an unmarried couple is to determine the terms of the parties’ original agreement with respect to that property and then attempt to enforce that agreement. Without an agreement as to ownership, payment of expenses, and what will happen to the property if the relationship ends, division of property for unmarried couples separating can be very unpleasant and expensive. If the parties cannot agree on how to divide their property after the relationship ends, the parties will have to file a civil suit to determine ownership and to divide the property.

There are two types of property designations for unmarried couples: (1) Joint tenants – the property is shared equally and there is an automatic right of survivorship (if one person dies, the other inherits all of the property), and (2) Tenants-in-common – each person owns a distinct share (for example 25/75, or more commonly 50/50). If one person dies, his/her will governs the distribution of his/her distinct share.

Property purchased jointly under either of the previous designations will generally be divided accordingly. If property is purchased by only one person and kept separate, that property will also generally remain that of the sole owner. The tricky issue involves property owned by one party but that involved the financial contribution of the other party, unless the parties entered into a cohabitation agreement.

Division of real estate owned by unmarried parties who cannot agree (and who do not have a cohabitation agreement) may be resolved through a partition action in state district court if the parties are both listed on the title as owners of the property. If only one party holds title to the real estate, but both contributed to payment of the mortgage, the contributing party who is not named on the title may bring a civil action for a constructive trust or unjust enrichment.

Statutory Authority

Minn. Stat. § 558.01 Partition, Sale; Who May Bring Action
“When two or more persons are interested, as joint tenants or as tenants in common, in real property in which one or more of them have an estate of inheritance or for life or for years, an action may be brought by one or more of such persons against the others for a partition thereof according to their respective rights and interest of the parties interested therein, or for a sale of such property, or a part thereof, if it appears that a partition cannot be had without great prejudice to the owners.”

Minn. Stat. § 513.075 Cohabitation; Property and Financial Agreements

“If sexual relations between the parties are contemplated, a contract between a man and a woman who are living together in this state out of wedlock, or who are about to commence living together in this state out of wedlock, is enforceable as to terms concerning the property and financial relations of the parties only if: (1) the contract is written and signed by the parties, and (2) enforcement is sought after termination of the relationship.”

Minn. Stat. § 513.076 Necessity of Contract

“These last two statutes were passed in response to the well-known case of Marvin v. Marvin, 18 Cal.3d 660, 134 Cal.Rptr. 815, 557 P.2d 106 (1976), and are sometimes referred to as Minnesota’s “palimony statutes” or “anti-palimony statutes.” This article generally refers to them as the “cohabitation statutes.” In Marvin, the California Supreme Court enforced an oral contract to pool earnings and share property “so long as the agreement [did] not rest upon illicit meretricious consideration.” Id. at 825, 116. Minn. Stat. § 513.075 specifically refers to a relationship involving a man and a woman and thus clearly cannot apply to same-sex couples. Same-sex couples would still have to overcome the statute of frauds (also requiring a writing) if there existed a dispute over real estate.

Cohabitation Agreements

Like antenuptial agreements, cohabitation agreements become more important the longer a couple resides together and the more property that they own in need of protection.

The two issues that should always be addressed in any cohabitation agreement are: (1) how property and assets are owned, and (2) whether or not income and expenses are shared. Some couples may choose to keep all property and income completely separate, while others choose to share their assets in one form or another. Assets can be designated as 50/50 or another
percentage, and couples can agree that the person who owns less than half may increase his/her share by putting in “sweat equity” or making additional payments toward the property.

A division of the couple’s assets upon separation should be included, as well as a process for resolving any property disputes that arise. For example, which person may have the first right to stay in the house and buy the other out, or will the home immediately be sold? If one person is allowed to buy the other person’s interest in the property, how will the value be determined and what is the timeframe for the buyout?

In the Matter of the Estate of Michael J. Leslie, No. A09-2293, 2010 WL 3545745 (Minn. App. Sept. 14, 2010) dealt with a cohabitation contract that the surviving cohabitant sought to enforce upon the death of her partner against his estate. The Court interpreted Minn. Stat. § 513.075 above as defining the necessary terms for an enforceable contract as: (1) that the contract must be written and signed by the parties, and (2) enforcement is sought after termination of the relationship (taking the wording of the statute literally). The Court rejected the estate’s claim that a cohabitation contract was unenforceable if not executed prior to the cohabitation, stating that the statute applied to “both new and ongoing cohabitation.” Id. at *2. Therefore, cohabitation agreements can be used in the same manner as a prenuptial agreement or postnuptial agreement. The Court also indicated that because evidence existed supporting other consideration for the contract than contemplation of sexual relations outside of wedlock (in this case, the surviving party had “invested sums of money and personal labor into the improvement” of the property), the case of In re Estate of Eriksen, 337 N.W.2d 671 (Minn. 1983) (discussed below) would support its enforcement, anyway. Id. at *3. This case indicates that establishing independent consideration for the agreement helps to ensure its enforceability if procedural requirements are in question.

**Partition Actions**

If the parties jointly own real estate and cannot reach an agreeable resolution how to dispose of it, they will need to bring a “partition action” in the district court under Minnesota Statutes Chapter 558. A partition action is a unique procedure with numerous statutory idiosyncrasies. Unlike the typical civil action, a partition complaint must be verified and must state the “cash value” of the property. A partition complaint must name with particularity all persons with an interest in the property and list any unknown interest that cannot be named. When unknown interest may exist for the property, the summons and complaint must also be served by publication after filing the complaint and a notice of pendency of the action. Because of these statutory provisions, failure to follow the requirement for a partition summons and complaint may raise a question whether the court has, or had, jurisdiction to partition the real property. Since an order issued without jurisdiction may be held void, a post-partition jurisdiction challenge would create a cloud on the title and, under the right circumstances, could lead to a client losing his or her ownership interest. Therefore, it is imperative to carefully review and follow Chapter 558 to ensure that the complaint is properly drafted and served.

After the complaint is filed and the rights of the parties are established by evidence, the court will enter judgment that the partition shall be made and appoint one or more referees depending on the requested relief. Once appointed, the referees’ duties are to divide the property, allot the ownership rights to the respective parties and make a report of their proceedings to the court.
The court may then confirm the report or set it aside and appoint new referees. The possible relief that may be granted in a partition action includes ordering the property to be sold, granting ownership to a party willing to accept it with that party paying to the other owners the amount that the referees award to “make the partition just and equitable,” or assigning exclusive occupancy and enjoyment of the whole or parts of the property to each party for specified times. If the plaintiff wishes the court to order a sale of the property, the complaint must allege a proper basis to support that request. It should also be noted that unlike other civil litigation, the costs, charges and disbursements of the partition action are apportioned between the parties based on the share of ownership.

There are several published and unpublished decisions that provide guidance with respect to the rights of unmarried couples seeking partition of real property. In the unpublished case of Anderson v. DeWitt, No. A07-0469, 2008 WL 2020416 (Minn. App. May 13, 2008) review denied July 15, 2008, the Court affirmed a judgment to Anderson in a partition action of $162,500, which was one-half of the increase in equity between the time the parties entered into “an implied oral agreement” to share the equity in property originally owned solely by DeWitt. Anderson made monthly payments to DeWitt that she claimed were to pay down the mortgage on the property. Anderson was able to bring a partition action because the parties refinanced the mortgage into a joint obligation and DeWitt signed a Quit Claim Deed creating a joint tenancy with Anderson a number of years following this “oral agreement” but prior to the end of the relationship. This case has an interesting discussion of Palmen (see footnote) and whether that case establishes a “general” versus “direct” contributions test regarding what one cohabitant may recover from the property, i.e. does the party need to directly contribute to the downpayment on the property or are “general contributions made for the benefit of the cohabitation” also recoverable. In this unpublished case, the Court took the middle ground, holding that “[o]rdinary financial and labor contributions inherent in day-to-day life generally do not establish that a cohabitant has acquired an identifiable interest in a particular piece of property to preserve and protect as their own should the cohabitation come to an end,” citing as its only example of a qualifying expenditure the payment of mortgage payments on a shared homestead. Id. at *3-4. Because the partitioning party was named on the title, could demonstrate an earlier “oral agreement,” and could prove that she contributed to the mortgage payments on the home, she was able to prevail.

Hansing v. Carlson, No. A04-1986 (Minn. App. 9/20/05), is another similar example. Here, the Court also found an oral agreement that the parties would each own one-half of a home purchased solely by Carlson with a mortgage in Carlson’s name (though the title was never changed to include Hansing). In this case, Hansing’s “contribution” and the consideration for the agreement was his agreement to be solely responsible for the mortgage payments, providing the amount to Carlson, who would in turn pay the mortgage holder. The Court here also found some of those “unique circumstances” discussed below to explain why title was never changed in that Hansing already owned another home at the time of purchase and was therefore unable to obtain a favorable mortgage in his name at the time of purchase of the shared property.

Mechura v. McQuillan, 419 N.W.2d 855 (Minn. App. 1988) is a surprising case where the Court refused to grant a cohabitant legal or equitable relief despite the fact that the title to the shared property was placed in joint tenancy, the parties obtained a mortgage in both of their names, and McQuillan contributed to the mortgage payments and other joint expenses, as well as purchasing
a washer and dryer, sewing machine and stereo for the home, which the other party was allowed to retain. Even with the title and mortgage held jointly, the Court found that no written contract existed between the parties pursuant to Minn. Stat. §§ 513.075 and 513.076 (“the cohabitation statutes”) and the party who provided the entire downpayment and who paid the majority of the mortgage payments and other joint expenses during the cohabitation retained the property. The cohabitant brought a partition action, but, after a trial, the court found that the parties did not intend to share equally in the ownership of the home, there was no contractual relationship, any contract would have lacked consideration, and there was no writing to satisfy 513.075. The Court distinguished Eriksen, supra, because there the two cohabitants made equal contributions to the acquisition and maintenance of property, while the cohabitant here provided nothing to the acquisition of the property. “This case represents precisely the type of claim Minn. Stat. Secs. 513.075 and 513.076 were designed to prohibit absent a written agreement between the parties. (citing Moore v. Sordahl, Tourville, and Hollom v. Caerey).” Id. at 859. Interestingly, “[t]he fact the parties held the property as joint tenants and signed real estate documents does not necessarily fulfill the writing requirement of Minn. Stat. Sec. 513.075. Specifically absent in these real estate documents is any reflection of the terms and conditions of the purported promises made by the parties in this case.” Id.

In Moore v. Sordahl, 389 N.W.2d 748 (Minn. App. 1986), Moore was denied any interest in real property titled in name of James Moore, with whom she had cohabited for 4 years. The deceased cohabitant has purchased the property in his sole name, supplying the entire downpayment, and made all of the payments on the property. When the parties decided to build a home on the property owned by Mr. Moore, Ms. Moore “took an active role in the planning process and performed the primary caretaking responsibilities.” She claimed to have put in $1,000 to the home. Ms. Moore argued that the parties had an “oral understanding” that they would “share their resources and expenses” but there was no written agreement. While the “cohabitation statute” was not enacted until 1980, and therefore did not apply, the district court properly utilized the Eriksen and Tourville decisions because both of those cases, while subsequent to the statute’s enactment, determined that the statute did not apply to the facts at hand and “simply reiterated basic principles of contract law.” Id. at 750. The Court distinguished the pre-statute case of Carlson v. Olson, 256 N.W.2d 249 (Minn. 1977), because the parties in that case held themselves out as married during their 21 year relationship, and owned a home and all of their other property as joint tenants. Here, there was a question whether the parties had held themselves out as married, and unquestionably did not own any property as joint tenants. The Court found it telling that Mr. Moore had not included Ms. Moore as a beneficiary of his life insurance or any other accounts, and did not provide for her in a will. Id. at 751.

Other Civil Actions

A constructive trust is an equitable remedy to prevent unjust enrichment. Dietz v. Dietz, 244 Minn. 330, 334, 70 N.W.2d 281, 283 (1955). To impose a constructive trust, the district court must find that it is justified to prevent unjust enrichment by clear and convincing evidence. Peterson v. Holiday Recreational Indus., Inc., 726 N.W.2d 499, 507 (Minn. App. 2007) review denied Feb. 28, 2007.

In In re Estate of Eriksen, 337 N.W.2d 671 (Minn. 1983), the Minnesota Supreme Court affirmed a probate court’s imposition of a constructive trust for the benefit of the surviving cohabitor in
property owned by the estate of the deceased cohabitor even without a written agreement, determining that the cohabitation statutes did not apply. The statutes do not apply “where the claimant does not seek to assert any rights in the property of cohabitant, but to preserve and protect her own property, which she acquired for cash consideration wholly independent of any service contract related to cohabitation.” Id. at 673-4. The oral agreement of the parties was deemed to be similar to a joint venture or partnership. The anti-palimony statutes should “apply only where the sole consideration for a contract between cohabiting parties is their ‘contemplation of sexual relations … out of wedlock.’” Id. at 674. “Thus, under Eriksen, unless the sexual relationship constitutes the sole consideration for the property agreement, cohabiting parties may maintain actions against each other regarding their own earnings or property, based on equitable theories such as constructive trust or unjust enrichment.” Obert v. Dahl, 574 N.W.2d 747, 749 (Minn. App. 1998) review granted April 14, 1998. Obert also seems to support a conclusion that the Court will consider whether “unique circumstances” existed that prevented the parties from changing the title or formalizing an agreement with respect to property, such as if one party had poor credit and would not qualify for a mortgage/refinancing, citing Eriksen (where one party was still married to someone else and receiving public assistance benefits) and Palmen (no “extraordinary circumstances” existed). See also Hollom v. Carey, 343 N.W.2d 701, 704 (Minn. App. 1984) (cohabitor had no interest in property when property was not purchased jointly and there were “no extenuating circumstances justifying the lack of a written agreement between the parties”). Id. at 750.

To prevail on a claim for implied contract and/or unjust enrichment, it is also important to present evidence that the cohabitant supplied his/her own property for the acquisition or maintenance of the property in question. In Roatch v. Puera, 534 N.W.2d 560, 564 (Minn. App. 1995) the Court reversed a property award following cohabitation because there was no written agreement or “understanding” of joint ownership, and the cohabitor made only minimal (and indirect) financial contributions to the household and business during the parties’ ten year cohabitation.

Le v. Tong, A07-0143, 2008 WL 763175 (Minn. App. March 25, 2008) review denied May 28, 2008 is an interesting example of another possible remedy for cohabitants who have split up. That case involved a complicated fact pattern with wildly different versions of events from the two parties involved as to who gave money to who and why. What is interesting about the case is that the Court granted relief to Ms. Le based upon a claim of “fraudulent misrepresentation” because she had mistakenly (but in good faith) believed that the parties were married, and that the transfer of titles and other property had been made to Mr. Tong because he had perpetrated the “sham” of their marriage. The Court affirmed, holding that the cohabitation statute did not apply because Ms. Le honestly believed that the parties were married and therefore a cohabitation contract would be completely unnecessary. The Court also cited Eriksen for the proposition that the cohabitation statutes do not bar a party from requesting property of his/her own so long as he/she is not seeking the property owned by the other party.

In Rodlund v. Gibson, No. A06-2255, 2008 WL 73548 (Minn. App. Jan. 3, 2008), the Court denied Mr. Rodlund’s claim to an equitable interest in property and unjust enrichment, despite the parties having lived together for over 13 years, on a few different grounds, the notable one being that the cohabitation statute does not apply when “there is no evidence that there was ever any sexual relationship between” the parties. This is unusual because the other ground is that
parties who live like they are married are not entitled to the protection of the marriage dissolution statutes governing property division. This opinion also affirmed the finding that Mr. Rodlund decreased the value of the property in question with his “shoddy workmanship” on home improvements and therefore he was not entitled to an increase in the property value, and that the parties had no agreement, oral or written, to purchase the property jointly. The Court also refused to credit a cohabitant for home improvements in Tourville v. Kowarsch, 365 N.W.2d 298, 300 (Minn. App. 1985) (without written agreement, cohabitor could not recover labor and material costs for home improvements when the home was titled in the other party’s name).

Interplay with Family Court

As it stands now, unmarried couples must file at least two separate actions in the event that the parties separate and if they have both property together and children together. While a married couple can address all of the issues involved with the end of their relationship in family court with one petition and one filing fee, an unmarried couple is forced to address custody and child support issues in family court, but file a separate petition in civil court to address the property issues that are in dispute.

Assessment/Conclusion

The number of couples cohabitating without marriage continues to increase. Unmarried couples are not responsible for the other’s debts upon the end of their relationship as married couples are, and are not required to formally dissolve their relationship in the event that they do not have disputes upon separation. While that is certainly a benefit, the downside is that property acquired during the cohabitation does not have the presumption of substantial contribution by each party as that of marital property in a divorce (Minn. Stat. § 518.58).

The best way to avoid disputes is for unmarried couples to agree on the percentage of ownership when titling the property as joint tenants/tenants in common or placing the title in one person’s name. To avoid constructive trust or unjust enrichment claims, the parties should, ideally, set forth in a cohabitation agreement each person’s agreed-upon monetary contributions or obligations with respect to the property and whether those contributions establish any additional rights with respect to the property. Whether there is an agreement or not, the couple should keep records of all payments made toward the property made by each of them.

1 The two most oft-cited cases in this area and which are referred to extensively in the unpublished cases cited herein are the Minnesota Supreme Court cases In re Estate of Palmen, 588 N.W.2d 493 (Minn. 1999), which reversed a Court of Appeals decision issued the prior year (574 N.W.2d 743 (Minn. App. 1998)), and In re Estate of Eriksen, 337 N.W.2d 671 (Minn. 1983) (referred to as a “seminal case” in Obert v. Dahl, 574 N.W.2d 747, 749 (Minn. App. 1998)).