

### HAPPY JULY 2023!

Happy July! I do not know about you, but for me it is hard to believe that the year is half over. I hope it finds you well. I also hope you enjoy (or enjoyed) a happy Independence Day. I am feeling nostalgic thinking of 4th of July's past with afternoons filled with family picnics, dips in lakes, yard games, and ending with the excitement of fireworks shot off a dock or a driveway...

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## COMMITTED INTIMATE RELATIONSHIPS – WHAT THEY ARE AND WHY YOU SHOULD KNOW



Do you have -- or does someone close to you have – a significant other? If so, are you familiar with the term 'committed intimate relationship?'

Based upon my informal polling, I am guessing the answer to the last question is "no." Committed intimate relationships ("CIRs") appear to be a booming area of law in our state. I continue to be surprised when yet another colleague tells me of a lawyer in their firm who has CIRs as a main part of their law practice. Clearly it is something that should be given attention.

In accordance with a 1984 Washington court case, ...

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## TRANSFER ON DEATH DEED – WHAT IT IS AND COULD IT BE HELPFUL FOR YOU



A transfer on death deed allows a beneficiary to receive a parcel of real estate upon the death of the owner(s). This type of deed has existed in Washington since 2014. The transfer on death deed is

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## CONT: HAPPY JULY 2023!

This year will be a little different for me. My daughter and I will be flying on the fourth to visit extended family who live in a small town about two hours outside of Sacramento. On Thursday, my daughter and I will get up early to drive to San Francisco where we will attend the International OCD Foundation's annual conference as our family has been touched by OCD. I have been hearing about this conference for some time now and look forward to attending. During the pandemic, conferences were cancelled in Seattle and New York City. The 2022 conference was in Denver, but unfortunately I completely forgot about it until after it was over.

I am hopeful that I will be able to attend sessions on hoarding, something that has affected some of my clients. I think back to a favorite session of mine at an elder law conference I attended where one of the hosts of the show 'Hoarders' spoke.

Some of my takeaways from that session were 1) random used books, especially paperbacks, have no value and can be sold for a few cents per pound; and 2) VHS tapes are – no surprise – worthless, except for a rare one about BMX bike racing. Sorry, I cannot remember the title.

Indeed, it is the best practice to consistently purge our 'stuff' versus leaving the disposal, upon incapacity or death, to a fiduciary, who typically has an otherwise full and busy life. They may have to spend countless hours disposing of the stuff and spend hundreds, if not thousands, of dollars on dumpsters and dumping fees.

I will be sure to share any gems from the OCD conference. Here's to a Happy 4th and a fantastic second half of 2023.

## CONT: COMMITTED INTIMATE RELATIONSHIPS – WHAT THEY ARE AND WHY YOU SHOULD KNOW

... In re Marriage of Lindsey, a CIR is a stable, marital-like relationship where both parties cohabitate with the common knowledge that a marriage between them does not exist. In determining whether a CIR exists, the court considers the following non-exclusive relevant factors:

- 1. Continuous cohabitation
- 2. Duration of the relationship
- 3. Purpose of the relationship and whether it is inclusive
- 4. Pooling of resources and services for joint projects
- 5. The intent of the parties

Pursuant to a 1995 Washington court case, Connell v. Francisco, for a court determine whether a CIR exists, a three-pronged analysis if followed: 1) the court must look at the relevant factors and determine whether a CIR exists; 2) if a CIR exists, then the court must evaluate the interest of each party in the property acquired

during the relationship; and 3) based on such information, the court must make a just and equitable distribution of property.

The purpose of Lindsey Connell, and similar cases is to protect individuals who may be left at a financial disadvantage upon the termination of such a relationship due to death of one of the partners. Such surviving partners may feel helpless watching their deceased partner's family members 'swoop in' to claim assets.

On the other side, the advent of CIRs may have unintended results. For example, during a relationship there may have been a mutual understanding that everything is separate and that assets will go to the deceased partner's children upon the partners' respective deaths. Note that it may not make a difference if the deceased partner remembered their...

## CONT: COMMITTED INTIMATE RELATIONSHIPS – WHAT THEY ARE AND WHY YOU SHOULD KNOW

partner in their Will or named them as an asset beneficiary.

When a partner of a CIR dies, the surviving partner may submit a petition to the court requesting the estate assets should be distributed based upon the existence of a CIR, leaving them open to objections filed by surviving family member of their deceased partner.

In amicable instances, a mutual agreement may be reached by the

surviving partner and the deceased partner's family members as to how the assets will be distributed.

A written agreement clearly stating the intentions of each partner can avoid the filing of such a petition or the need to execute a post-death agreement. An agreement should be considered even among platonic, long-term roommates, especially if the roommates previously had a romantic relationship.

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## CONT: TRANSFER ON DEATH DEED – WHAT IT IS AND COULD IT BE HELPFUL FOR YOU

recorded while the property owner is still alive. The deed names a beneficiary who will receive/own the property upon the property owner's death. Upon the death of the owner, the beneficiary submits a death certificate and real estate tax affidavit to the recorder of the

county in which the property is located. The current fees for submitting these documents to the recorder are about \$54.00. It is also important for the beneficiary to take steps to get the homeowner's insurance in their name as soon as possible.

## CONT: TRANSFER ON DEATH DEED – WHAT IT IS AND COULD IT BE HELPFUL FOR YOU

A recorded transfer on death deed supersedes any later attempt to distribute the real property by a Will.

A transfer on death deed avoids probate for the sole purpose of transferring the property. A transfer on death deed may make sense when there is one beneficiary or a few beneficiaries who get along well and have the same objectives for the property.

A transfer on death deed is likely not advisable when there are multiple beneficiaries, minor beneficiaries, beneficiaries who may not have the means to maintain the property, or disabled beneficiaries. I think back to a case where my client was left a life estate\* in a residence owned by his late wife and decided following her death that the house was too much for him to maintain. To sell the residence, his six stepchildren

needed to sign off the sale of the house. Getting their cooperation was extremely difficult. If I recall correctly, we had to petition the court for the appointment of a special master (typically a real estate lawyer) to sign the deed on behalf of the uncooperative stepchildren. In short, a transfer on death deed is likely not advisable where there are multiple beneficiaries who may have competing interests or equal abilities to maintain the property.

Moreover, a transfer on death deed may not be advisable if the intent upon death is for the property to be sold and the proceeds distributed among several individuals, charities, and/or to pay the tax and/or creditor obligations of the estate. Having a transfer on death deed would not avoid an estate or income tax obligation and could create complications for the fiduciary who has the responsibility to assure that the tax obligation is paid.

## CONT: TRANSFER ON DEATH DEED – WHAT IT IS AND COULD IT BE HELPFUL FOR YOU

If a transfer on death deed is executed, the transfer should be referenced in the property owner's Last Will, as they likely would not want their personal representative to spend thousands to probate the Will only to learn after the fact that probate was unnecessary. Also, keep in mind that the Will contains the 'back up plan' as to what will happen with your property, should the transfer on death beneficiary predecease the property owner.

If avoiding probate is the main objective for a transfer on death deed, a revocable living trust should also be considered. If all the assets subject to probate are in the trust name prior to the death of the Trustor (creator of the trust), probate can be avoided all together.

\*There are other options to life estates, like trusts – a topic for a future newsletter.

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**Disclaimer: this newsletter is informational only and should not be construed as legal advice.**

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If you have questions about leaving property to a relative, guardianship/conservatorship, or would you like to discuss your estate plan, please contact our client care specialist, **Margo Passeau**, directly at **(425) 296-3121** or by email at **[margo@bethmcdaniel.com](mailto:margo@bethmcdaniel.com)**

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