"You Lost That Loving Feeling" Now How Do You Sever Your Financial Ties

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By Julie A. Auerbach

Broken hearts may not be the only fallout from the breakup of an unmarried couple. The severing of these romantic ties may also have financial consequences. Untangling jointly held assets, such as real estate and bank accounts, are common byproducts of failed relationships. If there is a broken engagement, disputes may arise over who keeps the engagement ring. Payment of credit card debts and sharing of pets are other concerns that may become areas of disputes. And what about palimony, is it still a thing?

There is no unified statutory law establishing the rights and obligations of unmarried couples to one another when financial disputes arise. Instead, individuals must resort to general contract law, such as unjust enrichment, promissory estoppel, conditional gifts, and partition actions. The lucky few may have entered into cohabitation agreements, which clearly set forth the rights and obligations of each person. But more likely than not, most of these couples have not entered into cohabitation agreements.

So what options are available? As there is no all-encompassing law akin to the divorce code, each area of dispute must be addressed separately.

Jointly held real estate must be divided by partition, a lengthy and expensive process. It involves a two-part process; part 1 is a partition of the parties' legal interests into severalty. Part 2 divides the property between the parties by requiring one party to sell their interest in the property to the other party or requiring the sale of the

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property and distribution of the proceeds between the parties.

Special consideration may be given if one of the individuals supplied the down payment to the real estate. In McGoldrick v Murphy, ---- A.3d ----- (2020), the person who supplied the down payment on the residence made a conditional gift which was contingent on the occurrence of a marriage, and because a marriage did not occur, the person who supplied the down payment was entitled to reimbursement of it. The court was not swayed by the argument that gift letters were executed. These letters were only executed to obtain the mortgage. Instead, the court found that the sole purpose of the gift was to purchase a home for the parties to live as husband and wife. Since the marriage did not occur, the down payment was no longer a gift.

The law of conditional gifts was also applied to the return of an engagement ring in Lindh v. Surman, 742 A.2d 643, 560 Pa. 1 (1999). An engagement ring is a gift contingent on the occurrence of a marriage. Title to the donee vests only upon the marriage. If the marriage never occurs, the donor is entitled to the return of it. The Court specifically noted that its holding was to apply without regard to who was at fault for the termination of the relationship. If a fault-based principle was adopted, parties would be required to portray ex-fiancées in the worst possible light. Further, determining fault is not always clear and easily ascertainable. Just as most states have adopted a no-fault divorce statute, a no-fault policy for broken engagements should apply as well.

If there are joint bank accounts, they will have to be divided. Based upon the multi-party accounts section of the Decedents, Estates and Fiduciaries Code, 20 Pa.C.S.A. 6303, during the lifetime of the parties, the money in the joint account belongs to the parties in proportion to the net contributions by each, unless there is clear and convincing evidence of a different intent. One can imagine the disputes that could arise over the "intent" of the parties as to any division of monies in a joint account. If one person contributed all of the money to the joint account, the other person has to establish by clear and convincing evidence that the money in the account is a gift to that person and therefore should be shared equally. Litigation on this issue could very well result in a he said/she said dispute, requiring the court to decide who is more credible.

Pets are near and dear to many of us, but despite the emotional connection individuals have towards pets, Pennsylvania law considers pets to be personal property, 3 P.S.Section 459-601 (a). In Desanctis v. Pritchard, 803 A.2d 230 (2002), the former husband and the former wife had previously entered into a marital settlement agreement which awarded Barney, a dog purchased during the marriage, to the former wife. The agreement provided that former husband was permitted to visit with Barney. When former wife denied former husband the right to visit Barney, former husband filed a complaint in equity against former wife seeking shared custody of Barney. The former wife filed preliminary objections and the complaint was dismissed. On the appeal to the Superior Court, the court found that to the extent the parties' agreement attempts to award custodial visitation with personal property that portion of the agreement is void. The court went on to state that the relief being sought by former husband was akin to seeking a visitation schedule for a table or a lamp!

A particularly difficult dispute to resolve is the payment of jointly created debts, such as credit card debt, especially if the debts are held in only one person's name. The credit card company does not care who created or benefited from the debt. As far as it is concerned, the person who applied for and received the credit card is responsible. For example, if an unmarried couple uses a credit card for joint expenses but the credit card is only held in one person's name, there is no defense to collection of the debt on the basis that the charges made were for the benefit of someone other than the cardholder.

But can the cardholder seek recovery from the other individual? A civil suit for recovery of debts could be filed, raising claims of promissory estoppel, unjust enrichment, and quantum meruit. As in partition actions, such civil suits are lengthy and expensive. Enforcement of any judgment obtained could be a major concern if there are no assets to secure the payment of the judgment.

What about promises made by one person to provide financial support to the other, such as palimony? In Knauer v. Knauer, 323 Pa.Super. 206, 470 A.2d 553 (1983), the Court found that claims can be raised under theories of express or implied contracts and quantum meruit.

Knauer discussed the seminal case of Marvin v. Marvin, 18 Cal. 3d 660, 134 Cal. Rptr. 815,557 P. 2d 106 (1976), a California case involving the actor Lee Marvin. There the court held that providing personal non-sexual services, such as homemaking, companionship, housekeeping, and cooking, suffice to constitute consideration for an oral contract to support that person. The Marvin decision stated that "there is no more reason to presume that services are contributed as a gift than to presume that monies are contributed as a gift and there is a presumption that the parties intend to deal fairly with one another."

Knauer held that agreements between unmarried individuals fail only to the extent that they involve payment for sexual services. Further, the agreements may be express or implied.

Because there is so little law to protect unmarried couples, these individuals often walk away from such disputes, and often at great financial sacrifice. Litigation costs, uncertainty in the law, and slow-moving litigation often deter an individual's willingness to pursue claims in court.

Cohabitation agreements are a way to define the financial aspects of an unmarried relationship and to limit the possibility of disputes in the future. Marriage is always an option, too!

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Julie A. Auerbach *(JAuerbach@astorweiss.com) is a partner at Astor Weiss Kaplan & Mandel, LLP.*