

## ADR PROFILE

# Same-Sex Couples' Real Estate Disputes Provide Niche

## Attorney Becomes a Leading Authority on 'Intersection of Love and Property'

By Eron Ben-Yehuda

When increasing numbers of gay couples started splitting up in the early 1990s, Oakland attorney Frederick Hertz found a unique niche.

A decade before, domestic partners began settling down more often, in Hertz's opinion. They began forming familylike relationships, staying together longer and jointly buying property, he says.

"So when they broke up, they had things to fight over," Hertz, 51, says.

As someone who has practiced law in the gay community for 25 years, Hertz has witnessed this trend.

More typical cases used to involve gay people arrested for protests, having sex in public or, for example, lesbians losing custody of their children after heterosexual marriages fell apart, he says.

The switch to property disputes came later as the specter of AIDS and greater tolerance shown by society at large encouraged a more middle-class lifestyle, he says.

These days, Hertz is considered a leading authority on same-sex law, particularly with regard to real estate matters.

He describes his practice as "the intersection of love and property."

While devoting most of his work to advocacy, he acts as a mediator in 20 percent of the cases he handles. He charges \$280 an hour.

One of the biggest challenges in his field is the lack of clear guidelines for domestic partners who separate.

"The law is very unhelpful," he says. "The rules for unmarried couples are very vague."

In contrast, spouses who divorce are subject to highly regulated family law, with statutes regarding community property and spousal support.

As a result, gay couples often end up arguing over the slippery concept of what's fair, Hertz says.

Lawyers who have hired Hertz as a neutral say that he's got a knack for resolving conflicts evenhandedly.

"Fred is one of the most effective mediators I've used," San Francisco attorney



Photo by Xiang Xing Zhou

One of the biggest challenges is the lack of clear guidelines for domestic partners. "The law is very unhelpful," attorney Frederick Hertz says. "The rules for unmarried couples are very vague."

Brooke Oliver says. "He gets people motivated to try to find a solution by showing that there are a lot of different alternatives to people."

In a recent domestic-partnership dissolution, the one-time couple had shared a residence. Now, they fought over how much of the home's value each deserved. Oliver represented one of the men.

"The breakup was really acrimonious," Oliver of Oliver Law Group says.

But Hertz managed to convince the parties to come to a resolution in one session lasting 4½ hours, she says.

To do that, he kept the two sides in separate rooms and shuttled back and forth during negotiations, she says.

Hertz listened closely to her client's story and pointed out the advantages of concluding the matter that day in order to move on with life, she says.

"He's effective at using humor to break the tension," Oliver says. "He's compassionate

and yet also hard-nosed."

Hertz can get particularly irked if a mediation doesn't start on time.

"He very aggressively lectured one of the parties who came very late to the session," Berkeley attorney Frederic L. Harvey recalls.

Hertz says that half of his caseload involves same-sex couples. No organization tracks statistics on the number of attorneys who share Hertz's specialty, according to gay rights groups, but some estimates place the number at a few dozen lawyers across the state.

Hertz also handles property disputes among relatives and between heterosexual couples who cohabitate.

But he doesn't sort out child custody or adoption matters. He prefers to focus on real estate issues.

"He's really one of the state's experts in same-sex law," Oliver says.

Practitioners in the field of gay rights have

plenty to talk about because of this year's legal developments.

In June, the U.S. Supreme Court found in *Lawrence v. Texas* that laws criminalizing gay sex are unconstitutional.

Last month, Gov. Gray Davis signed AB205, which gives same-sex and heterosexual couples who register with the California secretary of state as domestic partners many of the same protections and duties now bestowed on spouses. The law provides, for example, rights regarding child custody and financial support after a partnership ends.

For Hertz, these changes reflect a belated recognition that the gay and lesbian community has moved into the mainstream.

"The legal world has finally caught up with the real world," says Hertz, who lives with his partner of 21 years, whom he preferred not to name.

But, three days after Davis signed the bill, state Sen. William "Pete" Knight, R-Palmdale, and the Christian legal group Alliance Defense Fund, based in Arizona, filed suit to block the law from taking effect as scheduled in January 2005.

To Hertz, that shows "there's a small minority [opposed to equality] that is still kicking."

Hertz became active in gay rights politics in the late 1970s while living in Austin, Texas. He helped organize protests against businesses that discriminated against gays and lesbians, and he volunteered in a family and job crisis center.

Those experiences sparked an interest in law school. He graduated from Boalt Hall in 1981.

Although he learned the tools of the trade in his late 20s, the seeds of his mediation skills were planted in early childhood.

He grew up in Minnesota, the youngest of three children in a household of "strong-willed" people.

Disagreements arose over everything from the allocation of chores to where the family would spend vacations.

"I was an advocate for myself and frequently the peacemaker," he says. "And I'm still the family mediator."