Same-Sex Couples’ Real Estate Disputes Provide Niche

By Erin 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 later, domestic partners began settling down more often, and Hertz’s opinion. They began forming familial relationships, staying together longer and jointly buying property, he says.

“Where 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 involved 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 stakes to property disputes came last 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.

“They’re very difficult,” he says. “If the couple split, the same-sex 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 he’s got a knack for resolving conflicts amicably.

“Fred is one of the most effective mediators I’ve used,” San Francisco attorney 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.”

The outcome typically requires a photograph of the couple, as well as a list of the property that was divided.

Hertz usually provides a detailed report to the court, which is then used to make a decision.

In a recent domestic partnership dissolution case, the couple came to a resolution in one session lasting 4 hours, he 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 conciliating 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 mediator doesn’t stick to the facts.

“She’s very aggressive,” he says. “I’ve seen her lecture one of the parties who came very late to the session.”

Hertz’s attorney Fred L. Harvey recalls.

Hertz says that half of his caseload involves same-sex couples. His organization tracks statistics on the number of attorneys who handle Hertz’s specialties, 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 cohabit.

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

“She’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 AB105, 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 broad 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-Valleymont, and the Christian legal group Alliance Defense Fund, based in Arizona, filed suit to block the law from taking effect as scheduled in January 2002.

To Hertz, that shows there’s a small minority opposed to equality that is still holding.

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 center.

These 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.”