Uniform Cohabitants' Economic Remedies Act

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NATIONAL CONFERENCE OF COMMISSIONERS
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Uniform Cohabitants' Economic Remedies Act

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Uniform Cohabitants' Economic Remedies Act

Table of Contents

Prefatory Note 1
Section 1. Title 7
Section 2. Definitions 7
Section 3. Scope 10
Section 4. Right of Cohabitant to Bring Action 11
Section 5. Governing Law 12
Section 6. Cohabitants' Agreement 13
Section 7. Equitable Relief 16
Section 8. Effect of Court Order or Judgment on Third Party 18
Section 9. Principles of Law and Equity 22
Section 10. Uniformity of Application and Construction 22
Section 11. Relation to Electronic Signatures in Global and National Commerce Act 23
Section 12. Transitional Provisions 23
[Section 13. Severability] 24
[Section 14. Repeals; Conforming Amendments] 24
Section 15. Effective Date 25

Uniform Cohabitants' Economic Remedies Act

Prefatory Note

The Uniform Cohabitants' Economic Remedies Act (UCERA) provides a mechanism to address the division of cohabitants' property interests when the cohabitation ends. UCERA does not create any special status for cohabitants. UCERA enables cohabitants to exercise the usual rights of individual citizens of a state to contract with others and to bring equitable claims against others in appropriate circumstances by affirming the capacity of each cohabitant to contract with the other and to claim a contract or equitable remedy against the other. Such claims may proceed without regard to any intimate relationship that exists between the cohabitants and without subjecting them to hurdles that would not be imposed on litigants of similar claims. Significantly, UCERA recognizes the value of non-sexual services, activities, and efforts of a party to the relationship as a basis for contractual and equitable claims.

UCERA responds to the increase in the number of nonmarital cohabitants in the United States over the past half-century. The Census first began including "Unmarried Partner" as a possible relationship in 1990.[1] As of 2019, more than 17 million people, representing seven percent of American adults, were cohabiting.[2] More adults have cohabited than have been married.[3] The number of older adults who cohabit is also growing. In 1996, only two percent of partners in cohabiting households were ages 65 or older; by 2017, that number had tripled to six percent.[4] Just over six percent of partners in cohabiting households earn over $90,000 per year, while more than half earn less than $30,000.[5]

Cohabiting relationships vary greatly. Cohabitants may share financial responsibilities during their cohabitation, or they may keep their finances separate. One cohabitant may move into a dwelling the other had acquired separately. They may acquire property together. Both may work, neither may work, or one may work and the other take care of the household. There are countless other arrangements.

In 1976, the California Supreme Court recognized potential economic rights between cohabitants, notwithstanding the nature of their relationship.[6] The court held that unmarried

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[1] Linda A. Jacobsen, *What is a Household?* (2020), https://www.prb.org/what-is-a-household/.
[2] Benjamin Gurrentz, *Cohabiting Partners Older, More Racially Diverse, More Educated, Higher Earner*s (2019), https://www.census.gov/library/stories/2019/09/unmarried-partners-more-diverse-than-20-years-ago.html.
[3] Nikki Graf, *Key Findings on Marriage and Cohabitation in the U.S.* (2019), https://www.pewresearch.org/fact-tank/2019/11/06/key-findings-on-marriage-and-cohabitation-in-the-u-s/.
[4] Gurrentz, *supra* n. 2.
[5] Gurrentz, *supra* n. 2.
[6] See *Marvin v. Marvin*, 557 P.2d 106 (Cal. 1976); Courtney G. Joslin, *Autonomy in the Family*, 66 UCLA L. Rev. 912, 927 (2019)("A plurality of states fully embrace *Marvin's* approach permitting claims as between former cohabitants based on express contract, implied contract, and equitable theories").

cohabitants could enter into enforceable contracts to share earnings or property or for support, so long as the parties' sexual relationship is not an inseparable part of the agreement. The court identified a broad range of possible remedies such as express or implied contract (including partnership and joint venture) and a cluster of other equitable doctrines such as quantum meruit, constructive trust, resulting trust, unjust enrichment, and equitable lien.

As cohabitation and its acceptance have changed over the years, so too have available claims and remedies at separation and death that derive from cohabitation. Twenty years ago, the American Law Institute summarized the state of American law regarding unmarried cohabitants as follows:

> In the United States, courts generally rely upon contract law when they conclude that cohabiting parties may acquire financial obligations to one another that survive their relationship. The great majority of jurisdictions recognize express contracts, and only a handful of them require that the contract be written rather than oral. Jurisdictions split on whether to recognize implied contracts. Those that do recognize implied contracts differ in their inclination to infer contractual undertakings from any given set of facts. Some courts reach much further than others. In doing so, they appear to vindicate an equitable rather than a contractual principle.[7]

While UCERA is an enabling act, the ALI proposed an alternative, perhaps radical, approach to cohabitancy in the *Principles of Family Dissolution* (ALI *Principles*).[8] The ALI *Principles* would extend the marital remedies of equitable distribution of property and alimony to cohabitants. However, the ALI's approach has not been fully adopted by any state. Closest has come the State of Washington, in which a long-term marriage-like cohabitation with a sharing of finances and other indicia of an interdependent relationship can give rise to a presumptive application of community property principles, both at dissolution and at death, but not to ongoing support obligations.[9] In addition, some jurisdictions have adopted systems that

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[7] American Law Institute, *Principles of the Law of Family Dissolution: Analyses and Recommendation* § 6.03 cmt (2002).

[8] *Id*. Chapter 6.

[9] *See Connell v. Francisco*, 898 P.2d 831 (Wash. 1995) (applying equitable presumption of community property principles to parties who lived in marriage-like "meretricious relationship"); *Muridan v. Redl*, 413 P.3d 1072 (Wash. Ct. App. 2018) (applying *Connell* and affirming that certain assets acquired during the relationship were to be classified as community-like property subject to a 50/50 equitable division between the parties). However, some other countries have enacted legislation similar to the system set out in the ALI *Principles*. E.g., Adult Interdependent Relationships Act, S.A. 2002, c A-4.5 (Can.), http://www.qp.alberta.ca/1266.cfm?page=A04P5.cfm&leg_type=Acts&isbncln=9780779780334 [https://perma.cc/N7FX-8PT3]; Family Statutes Amendment Act, S.A. 2018, c 18 (Can.), https://www.assembly.ab.ca/ISYS/LADDAR_files/docs/bills/bill/legislature_29/session_4/20180308_bill-028.pdf [https://perma.cc/X4KU-FYN5] (making numerous references to the Interdependent Relationships Act and substantially affecting the rights of those who qualify as Adult Interdependent Partners)

allow a nonmarital couple to opt into various obligations towards one another, such as through domestic partnership, civil union, or designated beneficiary statutes.[10]

Today, a number of states recognize rights between nonmarital cohabitants, notwithstanding the nature of their relationship, including, for example, Alaska, Arizona, Arkansas, Colorado, Connecticut, Kansas, Missouri, North Carolina, and Wisconsin. However, these states and others have varying approaches. Some states allow cohabitants to assert claims based on both express or implied contracts as well as equitable claims,[11] some states have imposed writing requirements on cohabitants' agreements,[12] some states have no reported cases, and a few states refuse to accept domestic or household services as lawful consideration, reasoning that such services are inextricably intertwined with the sexual relationship and are

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[10] E.g., C.R.S.A. § 15-22-104 (2021); NCLR, *Marriage, Domestic Partnerships, and Civil Unions: Same-Sex Couples Within the United States* (2020), https://www.nclrights.org/wp-content/uploads/2015/07/Relationship-Recognition.pdf. Other countries have adopted opt-in systems. *See, e.g.,* Mary Charlotte Y. Carroll, Note, *When Marriage Is Too Much: Reviving the Registered Partnership in A Diverse Society*, 130 Yale L.J. 478, 508 -513 (2020)(discussing Belgian and French opt-in systems).

[11] E.g., *Boland v. Catalano*, 521 A.2d 142 (Conn. 1987) (recognizing that cohabitants may assert claims based on express or implied contract, quantum meruit, equitable remedies*); Estate of Henry v. Woods*, 77 N.E. 3d 1200 (Ind. Ct. App. 2017) (permitting relief based on an express contract, an implied contract, or unjust enrichment, and rejecting argument that cohabiting couple were in a familial relationship which imposed a presumption that services were performed gratuitously); *Salzman v. Bachrach*, 996 P.2d 1263 (Colo. 2000) (holding unjust enrichment claim by nonmarital cohabitant not barred by public policy, does not require agreement or promise); *Bonina v. Sheppard*, 78 N.E. 3d 128 (Mass. App. Ct. 2017) (holding that there is no presumption in Massachusetts that contributions in a cohabitation relationship are gratuitous; that the existence of a romantic relationship does not prevent a party from recovering from a former cohabitant under an unjust enrichment theory); *Sands v. Menard*, 904 N.W.2d 789 (Wis. 2017) (concluding that a claim for unjust enrichment may lie when "two people work together to acquire property 'through the efforts of both,'" regardless of their cohabitation relationship, citing *Watts*, but that the relationship does not itself create the claim for relief, and that a party seeking relief must still establish the elements of unjust enrichment); *Shaw v. Smith*, 964 P.2d 428 (Wyo. 1998) (in recognizing claim for unjust enrichment by cohabitant, requiring proof that (1) valuable services were provided to the defendant, (2) which were used and enjoyed by the defendant, (3) under circumstances which reasonably notified the defendant that the plaintiff expected payment, and (4) without payment the defendant would be unjustly enriched).

[12] Minn. Stat. Ann. § 513.075 ("[i]f 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."); N.J.S.A. § 25:1-5(h) (promise of "support or other consideration" by party to nonmarital personal relationship must be in writing and with independent advice of counsel); Tex. Bus. & Com. Code Ann. § 26.01 (agreement made "on consideration of nonmarital conjugal cohabitation" must be in writing).

typically provided without expectation of compensation when a couple shares a residence.

Without comprehensive statutory direction, courts address cohabitants' claims on a case-by-case basis. Illinois provides a good example of the discrimination unmarried cohabitants may face. Illinois recognizes claims between nonmarital cohabitants when those claims are independent of the relationship.[13] But as recently as 2016, the Illinois Supreme Court refused to recognize a claim between individuals because they were cohabitants.[14] The court emphasized the state's continuing interest in distinguishing between marital and nonmarital relationships. Significantly, the court suggested that the appropriate source for change was the state legislature, not the courts.[15]

Even in states that recognize remedies for nonmarital cohabitants, some courts are nonetheless reluctant to award relief. In declining to recognize a cohabitant's claim, courts have often referenced the meretricious nature of the couple's relationship or a desire to preserve marriage.[16] There is thus no predictable result when cohabitants dissolve their relationship or when one cohabitant dies. This unpredictability is enhanced when cohabitants move from state-to-state.

For purposes of UCERA, a "cohabitant" is defined as one member of a couple if the two individuals live together "as a couple" and are not married to each other. The term does not set a time limit as to how long the individuals must cohabit to meet the definition. Individuals who are minors and those who are too closely related to marry cannot be cohabitants. A cohabitant might be married to someone else. This definition has no application to other law. For example, other

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[13] *See* Hewitt v. Hewitt, 394 N.E.2d 1204 (Ill. 1979)("cohabitation by the parties may not prevent them from forming valid contracts about independent matters, for which it is said the sexual relations do not form part of the consideration"); Spafford v. Coats, 455 N.E.2d 241, 245 (Ill. App. Ct. 1983)("[w]e conclude that the claims of the plaintiff are substantially independent of the non-marital relationship of the parties and are not based on rights arising from their cohabitation"); *see also Blumenthal v. Brewer*, 69 N.E.3d 834, 856 (Ill. 2016) (barring claim between cohabitants "if the claim is not **independent** from the parties' living in a marriage-like relationship for the reason it contravenes the public policy").

[14] *Id.* at 856.

[15] *Id*. at 858 ("Until the legislature sees fit to change our interpretation of the public policy in Illinois . . .").

[16] E.g., *Smith v. Carr,* 2012 WL 3962904 *4 (C.D. Cal. Sept. 12, 2012)("Without more, plaintiff's express contract claim must fail for lack of consideration, as plaintiff's alleged consideration is inextricably intertwined with any meretricious consideration"); Albertina Antognini, *Nonmarital Contracts,* 73 STAN. L. REV. 67 (2021).

state law that may govern modification or termination of spousal support upon cohabitation is not affected.[17]

Living "as a couple" is an intentionally fact-specific and broad standard. A sexual element is not required. If individuals living together are mere roommates, including them within UCERA does no harm; their claims and remedies will generally be identical whether under UCERA or other state law. On the other hand, had UCERA included an elaborate definition, litigants would spend considerable time and money attempting to establish that they were (or were not) cohabitants within the definition. The purpose of UCERA is to ensure that the nature of the parties' relationship is not a bar to their ability to bring claims against one another. The result of UCERA is that cohabitants have rights that are no more or fewer than other litigants.

UCERA recognizes that contractual and equitable claims can be based on the provision of non-sexual services, activities, and efforts by a party to the relationship. Courts have not always recognized the value of non-material contributions to a relationship, such as domestic services, as an adequate basis for recovery, reasoning instead that they are part of the cohabiting relationship and are thus rendered gratuitously.[18]

UCERA protects third parties. The interests of secured creditors of, and good faith purchasers from, a cohabitant, cannot be adversely affected by a remedy granted under UCERA.

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[17] *E.g.,* Ala. Code § 30-2-55 (2021)("Any decree of divorce providing for periodic payments of alimony shall be modified by the court to provide for the termination of such alimony upon petition of a party to the decree and proof that the spouse receiving such alimony . . .is living openly or cohabiting with a member of the opposite sex"); Del. Code Ann. tit. 13, § 1512 (2021)(" Unless the parties agree otherwise in writing, the obligation to pay future alimony is terminated upon the death of either party or the remarriage or cohabitation of the party receiving alimony"); La. Civ. Code Ann. art. 115 (2021)(alimony "is extinguished upon . . . a judicial determination that the obligee has cohabited with another person of either sex in the manner of married persons"); *see* Cynthia Lee Starnes, *I'll Be Watching You: Alimony and the Cohabitation Rule*, 50 Fam. L.Q. 261, 270 (2016)(discussing modification and termination of alimony in conjunction with cohabitation).

[18] *E.g.*, *Smith v. Carr*, No. CV 12-3251-CAS JCGX, 2012 WL 3962904, at *4 (C.D. Cal. Sept. 10, 2012)("plaintiff has not alleged she performed services in exchange for defendant's express promises apart from the interactions typical of every romantic relationship"); *Rabinowitz v. Suvillaga*, No. 17 CVS 244, 2019 WL 386853, at *8 (N.C. Super. Jan. 28, 2019)("Defendant affirmatively alleges that the parties "expressly formed a contract that obligated the parties to act as if they were married." [] Thus, the contract, as alleged, goes to the very essence of the parties' personal relationship . . . . Accordingly, the Court finds no basis under existing North Carolina law that allows Defendant to assert a breach of contract counterclaim based on the facts as alleged"); *see* Antognini, *supra* note 16, at 78 ("Courts hold that individuals cannot contract for exchanges that inhere in the relationship itself, such as services rendered, and generally decline to uphold contracts where the relationship could have been marital"). Some courts will recognize such exchanges. *See Knauer v. Knauer*, 470 A.2d 553 (Pa. Super. Ct. 1983) (finding an oral contract to share assets accumulated during the relationship based on the consideration of domestic services).

Child support obligations may not be affected by a claim under UCERA.

The spouse of a cohabitant represents a special kind of third party. Any transfer of property by a married cohabitant to the other cohabitant necessarily reduces the pool of assets potentially available to the spouse of the married cohabitant. Section 8 sets forth five different approaches an enacting state might adopt when a cohabitant is married, ranging from protecting the spouse against any diminution of value to treating the spouse as simply one more creditor. The Comment to Section 8 discusses the differing approaches that allow a state to choose which is appropriate for its residents.

The remedies provided in this act may not be the only remedies available to cohabitants. Cohabitants may have claims against one another based on other state law that are not covered by UCERA, including, for example, tort claims and partnership claims. UCERA supplements and does not replace existing state law.

Because UCERA is enabling and underlying state law will, in most instances, adequately cover the adjudication of cohabitants' claims, very little procedural law is included. UCERA contemplates that both contractual and equitable claims by a cohabitant could be brought as a part of the same action, as would typically be the case with litigants of similar claims. UCERA does not include a definition of court, nor does UCERA prescribe the court in which claims between cohabitants may be heard. An enacting state may decide that claims between cohabitants should be heard in general civil or family court. Other state law in an enacting state will govern whether these claims between living cohabitants are treated as general equitable and contract claims between individuals who just happen to be cohabitants or as claims that are similar to those heard by family courts. Claims involving deceased cohabitants should be heard in the court that handles settlement of decedents' estates and handled as a claim against the decedent's estate, and there is no need to obtain a judgment in civil or family court first, unless otherwise required under state law.

Uniform Cohabitants' Economic Remedies Act

Section 1. Title

This [act] may be cited as the Uniform Cohabitants' Economic Remedies Act.

Section 2. Definitions

In this [act]:

(1) "Cohabitant" means each of two individuals not married to each other who live together as a couple after each has reached the age of majority or been emancipated. The term does not include individuals who are too closely related to marry each other legally.

(2) "Cohabitants' agreement" means an agreement between two individuals concerning contributions to the relationship if the individuals are to become, are, or were cohabitants. The term includes a waiver of rights under this [act].

(3) "Contributions to the relationship" means contributions of a cohabitant that benefit the other cohabitant, both cohabitants, or the cohabitants' relationship, in the form of efforts, activities, services, or property. The term:

(A) includes:

(i) cooking, cleaning, shopping, household maintenance, conducting errands, and other domestic services for the benefit of the other cohabitant or the cohabitants' relationship; and

(ii) otherwise caring for the other cohabitant, a child in common, or another family member of the other cohabitant; and

(B) does not include sexual relations.

(4) "Property" means anything that may be the subject of ownership, whether real or personal, tangible or intangible, legal or equitable, or any interest therein. The term includes

responsibility for a debt.

(5) "Record" means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

(6) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States.

(7) "Termination of cohabitation" means the earliest of:

(A) the death of a cohabitant;

(B) the date the cohabitants stop living together as a couple; or

(C) the date of the cohabitants' marriage to each other.

Comment

UCERA applies to "cohabitants." Cohabitants cannot be in a common law or other lawful marriage to each other. However, either or both cohabitants may be married to someone else. A cohabitant may be an emancipated minor, but generally a cohabitant must be an adult. Cohabitants may not be so closely related that they would be prevented from marrying in the state in which they reside. The definition limits application of UCERA to cohabiting couples rather than to relationships of more than two people.

The meaning of "living together as a couple" is a factual question that will be determined based on the unique circumstances of the cohabitants' relationship. Living together does not require a common residence. Some couples will be apart because of work assignments or incarceration, for example, or may decide for financial or other reasons to maintain separate residences even though other facts demonstrate that they live together as a couple. Cynthia Grant Bowman, *How Should the Law Treat Couples Who Live Apart Together?*, 29 Child & Fam. L.Q. 335, 335-36 (2018). Living together as a couple does not require proof that the relationship has a sexual element.

Because the definition applies only to minors who have been emancipated, if a minor begins living with a nonmarital partner, UCERA will cover the rights and interests of the minor only after the age of majority is reached. The minor may nonetheless have rights outside of UCERA.

States that grant parties in civil unions or domestic partnerships rights comparable to those of a married couple should ensure that the term "cohabitants" does not include individuals who are in a civil union or domestic partnership with one another. Their rights and obligations are defined by other state law, not UCERA. *See, e.g.,* Nev. Rev. Stat. §122A.200(a)("Domestic partners have the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon spouses.").

Example 1: A, B, and C live together. Even if A and B are a couple, and B and C are a couple, and A and C are a couple, UCERA does not consider A, B, and C collectively as cohabitants. Thus, A may enter into a contract with, or make an equitable claim against, C, but A, B, and C cannot enter into an agreement under this act. Of course, each may have claims under other state law.

Example 2: A and B are cohabitants living in State X. A moves to State Y for six months for work but plans to return to State X to live with B after the work ends. Although A and B may not have been living together as a couple if they had been living in different states when their relationship began, once they began living together as a couple, and were thus cohabitants, a period of separation does not change the fact that they are cohabitants.

The definition of "contributions to the relationship" in subsection (3) is central to UCERA. In addition to property and domestic services, the term may also include activities related to business development, business entertaining, and similar activities for the benefit of the other partner or the relationship generally. E.g., *Hills v. Superior Court (Munoz),* No. B174068, 2004 WL 1657689, at *6 (Cal. Ct. App. July 26, 2004) (reasoning that female plaintiff's assertions, including that "she gave up her career and devoted herself to performing household and other domestic services for him so as to aid his business career," gave rise to triable issues). Contributions to the relationship can provide the basis for both contractual and equitable claims under UCERA.

While not required by UCERA, cohabitation may involve a sexual relationship. Under UCERA, the existence of a sexual relationship does not preclude a claim. However, sexual conduct is not a contribution to the relationship, and therefore cannot constitute all or any portion of the consideration for a contract between cohabitants or the basis of a claim between them. Courts have often confused domestic services and sexual services, a distinction that UCERA draws sharply. For further discussion of the prior confusion, *see* Albertina Antognini, *Nonmarital Contracts*, 73 Stan. L. Rev. 67 (2021).

A "cohabitants' agreement" relates to the exchange of property and services, activities, and efforts that are a part of the relationship of living together as a couple. Cohabitants' agreements need not be in writing. As used within UCERA with respect to a cohabitants' agreement, the definition of "record" makes clear that the existence of an express agreement may be found in videos, emails, and any other type of information that can be retrieved in a tangible form. A record is not, however, required to establish such agreements. Section 6 provides that a cohabitants' agreement may also be oral or implied-in-fact.

The nature of cohabiting relationships is informal and to require a formal writing would invalidate many otherwise valid agreements. The definition of cohabitants' agreement recognizes that such agreements may include a waiver of any rights a cohabitant may have, under UCERA or otherwise. The standards for establishing an effective waiver are governed by other law of the state.

The definition of "property" includes responsibility for a debt to indicate that there may be joint undertakings that require liabilities to be divided, and that debts affect the value of property.

The phrase "termination of cohabitation" is used in Sections 6 and 7 to specify when a cause of action accrues under UCERA. "Marriage", as used in the definition, includes a legally recognized common law marriage. In those states which grant rights comparable to marriage to individuals in a civil union or domestic partnership, an enacting state should include references to the civil union or domestic partnership, as appropriate, wherever UCERA refers to "marriage" or "spouse".

Section 3. Scope

This [act] applies only to a contractual or equitable claim between cohabitants concerning an interest, promise, or obligation arising from contributions to the relationship. The rights and remedies of cohabitants under this [act] are not exclusive.

Comment

Together, Section 3 and Section 4 set out the express purpose of UCERA: to remove bars to claims so that cohabitants are treated as other litigants under applicable state law and are not precluded from bringing claims solely because their relationship is possibly sexual and certainly nonmarital. UCERA affirmatively recognizes a cohabitant's right to maintain relationship-based claims.

In *Blumenthal v. Brewer*, 69 N.E.3d 834, 854 (Ill. 2016), the Illinois Supreme Court rejected constructive trust and restitution claims by a long-term cohabitant, noting that although the parties may have contracted independently of their cohabiting relationship, recognition of claims based on their cohabiting relationship would be inconsistent with the legislature's abolition of common law marriage. In *Gunderson v. Golden,* 360 P.3d 353 (Idaho Ct. App. 2015). The court rejected a claim for division of property after a 25-year cohabitation stating "[t]he elimination of common-law marriage, supported by an explicit public policy justification, commands our courts to refrain from enforcing contracts in contravention of clearly declared public policy and from legally recognizing cohabitational relationships in general." *See also, e.g.,* Antognini, *supra*.

Enforcement of a contractual or equitable claim under this act may take a variety of forms.

Example 1: A and B are cohabitants. After termination of the relationship, A still has property in the household. A court might enjoin A from access to the residence while adjudicating the property claims.

Example 2: One cohabitant has photos or videos taken during the relationship that the other cohabitant might seek to have preserved or deleted.

This section makes clear that a cohabitant may have cognizable rights vis-a-vis the other cohabitant by virtue of other state law that are not lost unless clearly inconsistent with this act. The rights and remedies provided by UCERA are not the exclusive rights and remedies afforded to cohabitants. For example, if cohabitants are partners in a professional practice, the governing instrument will provide rights and remedies to the cohabitants that are consistent with this act. Tort claims between cohabitants are not affected by UCERA.

UCERA has no effect on marriage or state law governing marriage. Marriage is a formal legal status that provides spouses with rights and remedies unavailable to cohabitants under UCERA.

Section 4. Right of Cohabitant to Bring Action

(a) An individual who is or was a cohabitant may commence an action on a contractual or equitable claim that arises out of contributions to the relationship. The action is not:

(1) barred because of a sexual relationship between the cohabitants;

(2) subject to additional substantive or procedural requirements because the parties to the action are or were cohabitants or because of a sexual relationship between the cohabitants; or

(3) extinguished by the marriage of the cohabitants to each other.

(b) The action may be commenced on behalf of a deceased cohabitant's estate.

(c) The action may be commenced against a deceased cohabitant's estate and adjudicated under law of this state applicable to a claim against a decedent's estate.

Comment

Section 4(a) reiterates and expands on Section 3: the purpose of UCERA is to allow cohabitants to assert claims against one another in the same manner as other litigants without imposition of additional bars or requirements. Section 4(a)(3) makes clear that even if the cohabitants subsequently marry, any claims arising from the cohabitation are not lost. Their

marriage terminates the cohabitation but not the viability of the claim. Cohabitants who intend to marry may, and probably should, clarify their rights in a premarital agreement, including consideration of any rights enforceable under UCERA. See the Uniform Premarital and Marital Agreements Act (2012).

Subsequent sections of UCERA make clear that claims between cohabitants are subject to other state law (see Section 5), with a few minor exceptions. A cohabitant's claim will be subject to the same statutes of limitation and burdens of proof as apply to other contractual or equitable claims between individuals under the law of the enacting state. Under Section 6 (c), a claim for breach of a cohabitants' agreement accrues on breach. An equitable claim predicated on contributions to the relationship accrues on termination of cohabitation under Section 7(b). The accrual rules of UCERA may not conform to the enacting state's law for similar claims but reflect appropriate standards for claims between cohabitants.

UCERA does not specify the appropriate court for actions between cohabitants. A state may require that such actions be brought in a court of general jurisdiction. However, if a cohabitants' claim is brought upon divorce, then a state might want to authorize the court handling the divorce to adjudicate a cohabitant's claims. Moreover, UCERA leaves to other state law the question of whether a jury trial is available.

Subsections (b) and (c) confirm that claims may be brought against, or on behalf of, the estate of a deceased cohabitant. The enacting state's procedures governing claims by or against a decedent's estate will similarly govern any such claim involving cohabitants, although Section 8 provides alternatives for states wanting to add some protection for the spouse of a cohabitant.

Section 5. Governing Law

(a) Except as otherwise provided in this [act], a claim under this [act] is governed by other law of this state, including this state's choice-of-law rules.

(b) The validity, enforceability, interpretation, and construction of a cohabitants' agreement are determined by:

(1) the law of the state designated in the agreement if the designation is valid under other law of this state; or

(2) in the absence of a designation effective under paragraph (1), the law of this state, including this state's choice-of-law rules.

Comment

UCERA changes state law to the extent the law prevents recognition of contractual or equitable claims based on the value of contributions to the relationship, including domestic

services, to the cohabitants but does not change procedural law governing statutes of limitation, choice of law, transfers of property, probate proceedings and similar matters. UCERA is designed to fit into an enacting state's legal structure for enforcement of contractual or equitable claims.

Subsection (b) provides that, as with most other agreements, a cohabitants' agreement may specify a governing law, provided the specified law has a relationship to either the parties or their agreement, and it is not contrary to the enforcing state's public policy.

As cohabitants move between states, UCERA contemplates that the rights of those cohabitants to bring claims against one another will be preserved if consistent with conflict of law principles.

Example 1: A and B are cohabitants and live in State X, which has enacted UCERA. After three years in State X, they move to State Y, which has not enacted UCERA. State Y should apply its own choice-of-law rules to determine the rights between the parties under State X law.

Example 2: A and B are cohabitants and live in State Y, which has not enacted UCERA. They vacation in State X, which has enacted UCERA. Rights do not arise under UCERA from the vacation in State X.

Example 3: A and B are cohabitants and live in State Y for three years. State Y has not enacted UCERA. They move together to State X, which has enacted UCERA. Their relationship then terminates after a short time in State X. After the move, A may bring an action in State X against B for claims under UCERA based on their cohabitation in State Y. In adjudicating the claims, a State X court would need to determine whether the public policy of State X should override the public policy of State Y.

Example 4: A and B are cohabitants and live in State Y for three years. State Y has not enacted UCERA. Their relationship terminates. B remains in State Y, and A then moves to State X, which has enacted UCERA. A may have a common law claim, subject to the jurisdiction of State X, but does not have a claim under UCERA in State X.

Section 6. Cohabitants' Agreement

(a) A cohabitants' agreement may be oral, in a record, express, or implied-in-fact.

(b) Contributions to the relationship are sufficient consideration for a cohabitants' agreement.

(c) A claim for breach of a cohabitants' agreement accrues on breach and may be commenced, subject to [cite to the applicable statute of limitations on contractual claims], during

cohabitation or after termination of cohabitation.

(d) A term in a cohabitants' agreement that affects adversely a child's right to support is unenforceable.

(e) A term in a cohabitants' agreement that requires or limits the ability of a cohabitant to pursue a civil, criminal, or administrative remedy is voidable to the extent the remedy is available because the cohabitant is a victim of a [crime of violence].

Legislative Note: *Subsection (e) should refer to a state's statutory or judicial definition of "crime of violence" or, in absence of a definition, cite to appropriate crimes.*

Comment

Section 6 sets forth the general rules governing a cohabitants' agreement. A cohabitant may bring claims under both Sections 6 and 7. A state will handle such claims in the same way as it handles other lawsuits with both contractual and equitable claims.

Example: A and B are cohabitants. They have a cohabitants' agreement, providing that A can live in B's condo so long as A makes the car payment. In fact, A makes the car payment and also pays for a new furnace because B loses a job at the start of the COVID-19 pandemic. A and B terminate their relationship, and B locks A out of the condo. A may have both a contractual and an equitable claim (based on payment for the new furnace), as well as a claim under state and federal law that prohibited evictions during the pandemic emergency.

Subsection (b) provides that contributions to the relationship may constitute consideration for a cohabitants' agreement. This provision will abrogate decisions in which courts have been reluctant to find that domestic services are adequate. *See* Antognini, *supra*; *see, e.g.*, *Smith v. Carr*, No. CV 12-3251-CAS JCGX, 2012 WL 3962904, at *4 (C.D. Cal. Sept. 10, 2012); *Rabinowitz v. Suvillaga*, No. 17 CVS 244, 2019 WL 386853, at *8 (N.C. Super. Jan. 28, 2019); *but see Knauer v. Knauer*, 470 A.2d 553 (Pa. Super. Ct. 1983).

Subsection (c) makes clear that a claim for breach may be brought while the couple is still living together and even though the relationship has not been terminated. It also reiterates the rule of Section 5(a) to specify that the applicable statute of limitations is set by other state law.

When cohabitation is terminated by death, there may be questions about the enforceability of an agreement concerning a provision to be made – or not to be made – in a will. Sections 3 and 5 provide for claims between cohabitants to be treated comparably with claims between non-cohabitants. Issues concerning the enforceability of an agreement to make a provision at death is governed by other state law. An express cohabitants' agreement may be covered by Uniform Probate Code Section 2-514(iii), which permits, for example, "a writing

signed by the decedent evidencing the contract" to be enforceable.

The Statute of Frauds generally applies to invalidate a promise that, by its terms, cannot be performed within one year, and could thus be applicable to some cohabitants' agreements. "[T]he enforceability of a contract under the one-year provision does not turn on the actual course of subsequent events, nor on the expectations of the parties as to the probabilities." Restatement (Second) of Contracts § 130 cmt. (1981). And, some jurisdictions allow part performance to serve as reliable enough evidence of the agreement to take it outside the statute. Robert E. Scott and Jody S. Kraus, Contract Law and Theory 521 (5th ed. 2013); Jody S. Kraus & Robert E. Scott, *Contract Design and the Structure of Contractual Intent*, 84 N.Y.U. L. Rev. 1023, 1044 (2009). Similarly, in some jurisdictions, when a promisor makes a promise "which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce the action or forbearance," then the promise "is enforceable notwithstanding the Statute of Frauds if injustice can be avoided only by enforcement of the promise." Restatement (Second) of Contracts § 139 (1981); *but see Olympic Holding Co. v. ACE Ltd.*, 909 N.E.2d 93, 100 (Ohio 2009)("we hold that a party may not use promissory estoppel to bar the opposing party from asserting the affirmative defense of the statute of frauds, which requires that an enforceable contract be in writing and signed by the party to be charged, but may pursue promissory estoppel as a separate remedy").

Example: A and B are cohabitants. A works primarily at a business, and B works sometimes in the business but also in the home. A orally promises to take care of B by providing B a share of the business in return for B taking care of the home during B's life. The promises do not fall within the one-year provision of the Statute of Frauds, since B's life may terminate within a year. Restatement (Second) of Contracts § 130 (1981). Moreover, if A and B cohabit for a full year after the promise is made, that is sufficient indicia that the promise was made to remove the agreement from the statute.

Subsection (d) provides a reminder of the general rule that child support obligations have priority over other claims to the income of the payor. UCERA does not affect child support determinations or child support obligations.

Subsection (e) protects the rights of victims of crime. It ensures that their remedial rights relating to the crime are not lost through a cohabitants' agreement. For example, a term in an agreement which provided that a cohabitant could not pursue a civil protection order would be voidable. Similarly, a provision in a cohabitants' agreement which purported to give a cohabitant a right or interest in payments the other cohabitant received from or through the perpetrator, in an administrative or civil proceeding, would be voidable. A provision in an agreement that would require a crime victim to pursue a civil, criminal, or administrative remedy is also presumed to be coercive and therefore voidable.

It should be noted that Section 6 governs any express, oral, or implied-in-fact agreement or contract. Section 7 deals with equitable remedies, including quasi-contract.

The definition makes clear that a valid cohabitants' agreement can waive any and all rights one might have against the other or preclude any or all claims against each other.

Section 7. Equitable Relief

(a) Unless maintaining the action is inconsistent with a valid cohabitants' agreement, a cohabitant may commence an equitable action against the other cohabitant concerning entitlement to property based on contributions to the relationship. The action is in addition to any remedy otherwise available to the cohabitant under this [act] or other law.

(b) An equitable claim based on contributions to the relationship accrues on termination of cohabitation and is subject to equitable defenses.

(c) In addition to other law governing an equitable claim, the court adjudicating a claim under this section shall consider:

(1) the nature and value of contributions to the relationship by each cohabitant, including the value to each cohabitant and the market value of the contributions;

(2) the duration and continuity of the cohabitation;

(3) the extent to which a cohabitant reasonably relied on representations or conduct of the other cohabitant;

(4) the extent to which a cohabitant demonstrated an intent to share, or not to share, property with the other cohabitant; and

(5) other relevant factors.

Comment

This section makes clear that unjust enrichment and other equitable claims between cohabitants may be based on non-monetary contributions to the relationship and need not be tied to any specific asset.

UCERA contemplates that courts will consider a range of appropriate forms of equitable relief, such as disgorgement, constructive trust, injunctive relief, and particularly preliminary injunctive relief, to prevent the dissipation of assets. Because this act does not create a status comparable to marriage, relief of the sort ordinarily prescribed on dissolution of marriage is inapplicable.

If a cohabitant has inconsistent contractual and equitable claims against the other, subsection (a) makes clear that the agreement controls.

Subsection (b) represents an exception to the general policy of UCERA to defer to other state law. An equitable claim under this act accrues on termination of cohabitation by death, marriage of the cohabitants, or when the cohabitants stop living together as a couple. It is important, especially in cases in which the cohabitants lived in multiple states, to have a date certain from which the time to bring a claim, as prescribed in other state law, will begin to run. It is at the point of termination that rights, if any, under this act will vest in a cohabitant. Other state law will determine whether an action to enforce those claims is timely.

Subsection (c) provides a list of factors for a court to consider when adjudicating an equitable claim between cohabitants. The factors ensure that certain aspects of the cohabiting relationship are assessed, allowing a court to properly determine whether and to what extent to provide equitable relief. These factors provide guidance and do not restrict a court's consideration of other factors.

Most importantly, the factors ensure that contributions to the relationship are appropriately valued. These contributions are the essence of the sharing and exchange between the parties and therefore proper valuation is crucial. The Restatement (Third) of Restitution and Unjust Enrichment § 28 cmt. d (Am. Law Inst. 2011) notes that equitable claims "based purely on domestic services are less likely to succeed, because services of this character tend to be classified among the reciprocal contributions normally exchanged between cohabitants whether married or not." When the contributions are provided in the form of services, UCERA generally, and this section in particular, dictates that they not be thought to be provided gratuitously. Courts are directed to evaluate contributions broadly, by including consideration of the subjective value to each cohabitant and to the cohabitants as a couple, as well as market value. For example, the value of a homemaker cohabitant's services to the household should be valued at more than the hourly rate of a housekeeper or cook, and the benefits that the cohabitant performing the services likely receives from the other cohabitant should be valued as well. Generally, market value will be determined at the time of contribution, while value to the cohabitant(s) will be determined as of a later date.

Example: A and B are cohabitants. A takes care of the home and the four children of A and B, while B starts a successful business (but spends little time on domestic services). Both the value of the business and the value of A's domestic services are contributions to the relationship that would be evaluated and considered if A brought a claim against B for an interest in the business.

Because UCERA is merely an enabling act, there is no requirement that the cohabitants live together as a couple for any particular period of time. However, the duration and continuity of the relationship will be significant factors for a court to consider when determining the equities as between the parties. For example, duration may be relevant in determining the reasonableness of a party's reliance on the conduct of the other cohabitant or the nature of any relief to be granted.

Reasonable reliance may give rise to an equitable claim, but not reliance that is unreasonable under the circumstances. A court might consider a promise by one cohabitant that the other could live rent-free forever in the cohabitant's property unreasonable, but might consider a promise tied to a period of months to be reasonable. *See, e.g., Marra v. Nazzaro*, 94 N.Y.S.3d 539 (N.Y. City Ct. 2018)(enforcing, based on promissory estoppel, defendant's promise to plaintiff to allow her to live rent-free on his property for a period of months).

Finally, an adjudicating court is required to consider evidence, if any, relating to the parties' conduct or statements showing each cohabitant's intent to share property with the other, whether during the relationship or when the relationship ends. Thus, statements such as "what's mine, is yours" would be relevant, as would the fact that title to the joint residence remained in the name of one cohabitant. The mere fact that a party meets the definition of "cohabitant" alone is not a basis on which a remedy under UCERA will be granted. One cohabitant's reasonable understanding that property would be shared, even if not the other party's understanding, would be relevant but not determinative to granting equitable relief under UCERA.

Example 1: A and B are cohabitants who maintain separate bank accounts. They enjoy together A's vacation home where they spend their summers. Only A's funds are used to maintain the vacation house. A court would likely not find intent to share assets based on these facts alone.

Example 2: A and B are cohabitants and maintain a joint bank account for expenses incurred in the relationship. For 15 years they live in a house titled in A's name. Each cohabitant has children by a previous marriage and A retitles the house in the names of his children. Retitling would indicate no intent to share as a court evaluates the overall contributions to the relationship if one cohabitant brought claims against the other.

Example 3: A and B are cohabitants. A tells B that A will take care of B for the rest of B's life. A's statement indicates an intent to share at least some assets on termination of the relationship.

The list of factors included is not exhaustive. Subsection (c)(5) provides a catch-all factor authorizing a court to examine fully all relevant equities. The existence and scope of a cohabitants' agreement might be relevant to the courts' consideration of an equitable claim, as would a business agreement between the cohabitants. A comprehensive agreement between the cohabitants, even if that agreement does not waive equitable claims, might indicate that the enrichment of one was not unjust.

Section 8. Effect of Court Order or Judgment on Third Party

(a) [Except as provided in subsection (c), a][A] court order or judgment granting relief under this [act] against a cohabitant or a cohabitant's estate is an order or judgment in favor of a general creditor.

(b) A court order or judgment granting relief under this [act] may not impair the rights of a good-faith purchaser from, or secured creditor of, a cohabitant.

[Alternative A

(c) A court order or judgment granting relief under this [act] may not impair the right or interest of a cohabitant's [spouse] or surviving [spouse] to the cohabitant's property.

Alternative B

(c) A court order or judgment granting relief under this [act] may not impair the right or interest of a cohabitant's [spouse] or surviving [spouse] to the cohabitant's property unless:

(1) the [spouse] had notice of the proceedings on the claim and an opportunity to be heard;

(2) before entering the order or judgment, the court determines based on the totality of the circumstances that justice requires that all or part of the cohabitant's claim should be satisfied; and

(3) the order or judgment preserves as much of the [spouse's] right or interest as appropriate or legally required.

Alternative C

(c) A court order or judgment granting relief based on an equitable claim under Section 7 may not impair the right or interest of a cohabitant's [spouse] or surviving [spouse] to the cohabitant's property.

Alternative D

(c) A court order or judgment granting relief based on an equitable claim under Section 7 may not impair the right or interest of a cohabitant's [spouse] or surviving [spouse] to the cohabitant's property unless:

(1) the [spouse] had notice of the proceedings on the claim and an opportunity to be heard;

(2) before entering the order or judgment, the court determines based on the totality of the circumstances that justice requires that all or part of the cohabitant's claim should be satisfied; and

(3) the order or judgment preserves as much of the [spouse's] right or interest as appropriate or legally required.

End of Alternatives]

Legislative Note: *This section provides five options for treating a claim of a spouse and a cohabitant to a married cohabitant's property:*

(1) A state that chooses to treat a cohabitant's claim as a general creditor's claim in all cases should adopt only subsections (a) and (b) and not adopt any of the alternatives for subsection (c).

(2) A state that chooses to insulate a spouse from both contractual and equitable claims of a cohabitant should adopt Alternative A.

(3) A state that chooses to insulate a spouse from both contractual and equitable claims of a cohabitant but allow a court under certain circumstances to find that justice requires at least some satisfaction of the cohabitant's claim against a married cohabitant should adopt Alternative B.

(4) A state that chooses to treat a cohabitant's contractual claim as a general creditor's claim and insulate a spouse only from an equitable claim under Section 7 should adopt Alternative C.

(5) A state that chooses to treat a cohabitant's contractual claim as a general creditor's claim and allow a court under certain circumstances to find that justice requires some satisfaction of the cohabitant's equitable claim under Section 7 against a married cohabitant should adopt Alternative D.

If a state's law provides that individuals in a civil union or domestic partnership have a right comparable to individuals in a marriage, the state should insert the appropriate terms in addition to "spouse".

Comment

UCERA treats a judgment in favor of a cohabitant as a judgment in favor of a general

creditor, whether the judgment is against a living cohabitant or a deceased cohabitant's estate. Secured creditors of, and good faith purchasers from, a cohabitant who generally have no notice, actual or constructive, of the cohabitants' relationship, are protected vis-à-vis claims of the other cohabitant.

UCERA includes a cohabitant who is married to someone else within the purview of UCERA. Were it otherwise, anyone who cohabits with an individual who is married would risk having an otherwise legitimate contract or equitable claim denied. Including married cohabitants ensures that equity is done between the cohabitants. The reality is that many cohabitants are married to others. As a policy matter, however, UCERA recognizes that an enacting state may want to enhance the rights of a spouse of a cohabitant.

A state that wishes to treat the spouse of a cohabitant as a general creditor should not adopt any of the alternatives for bracketed subsection (c). The alternatives give states flexibility to consider whether and when the claim of a spouse should come before the claim of a current cohabitant. Four alternatives are included. Each prioritizes the rights and interests of a spouse of a cohabitant over the claims of the other cohabitant in slightly different ways. An enacting state should adopt the alternative which best represents the state's public policy regarding marriage or spousal rights and cohabitation.

Example 1: A is married to B. B is cohabiting with C. B executes a will that leaves all of B's property to X, B's brother. B dies. C asserts both equitable and contractual claims under this act to be satisfied from B's estate. A asserts an elective share claim against B's estate.

Under Alternative A, once A's elective share has been satisfied, C's equitable and contractual claims can be enforced against any remaining property in the estate.

Under Alternative B, after the spouse receives notice and an opportunity to be heard in the proceeding between the cohabitants, a court can determine that justice requires satisfaction of the cohabitant's contractual and equitable claims prior to satisfaction of the spouse's elective share. But even if the court finds that justice requires a remedy for the cohabitant, the court must tailor the remedy to provide as much protection as is appropriate or legally required for the spouse's interests.

Under Alternative C, prioritizing a spouse's claims only over equitable claims, C's contractual claims would be treated like other creditor claims, potentially reducing the size of the estate against which A can assert an elective share. C's equitable claims could only be asserted after A's elective share has been satisfied.

Under Alternative D, C's contractual claims would be treated like other creditor claims. After the spouse receives notice and an opportunity to be heard in the proceeding between the cohabitants, a court can determine that justice requires satisfaction of the cohabitant's equitable claims prior to satisfaction of the spouse's elective share. But even if the court finds that justice requires a remedy for the cohabitant, the court must tailor the remedy to provide as much protection as is appropriate or legally required for the spouse's interests.

Example 2: A is married to B. B is cohabiting with C. B dies intestate in State X, with no children or parents who survive. Under the law of State X, the surviving spouse receives the entire intestate estate.

Under Alternative A, there is no property available to satisfy any equitable or contractual claims that C might assert against the estate.

Under Alternative B, after the spouse receives notice and an opportunity to be heard in the proceeding between the cohabitants, a court can determine that justice requires satisfaction of the cohabitant's contractual and equitable claims prior to satisfaction of the spouse's intestate share, although. But even if the court finds that justice requires a remedy for the cohabitant, the court must tailor the remedy to provide as much protection as is appropriate or legally required for the spouse's interests.

Under Alternative C, C's contractual claims would be treated like other creditor claims, potentially reducing the size of the intestate estate available to A, but none of B's remaining property would be available to satisfy any equitable claim that C might assert against the estate.

Under Alternative D, C's contractual claims would be treated like other creditor claims. After the spouse receives notice and an opportunity to be heard in the proceeding between the cohabitants, a court can determine that justice requires satisfaction of the cohabitant's equitable claims prior to satisfaction of the spouse's intestate share. But even if the court finds that justice requires a remedy for the cohabitant, the court must tailor the remedy to provide as much protection as is appropriate or legally required to the spouse's interests.

Whether or not a state adopts any of the alternative subsection (c) provisions, certain retirement benefits and pensions are protected by federal and state law. ERISA provides that a spouse must receive certain benefits unless the spouse waives those benefits, and ERISA preempts all state law to the contrary. Most pensions and retirement plans are covered by ERISA, whereas typically Individual Retirement Accounts (IRAs) are not. In addition to ERISA, some states protect a spouse's rights to retirement assets. *See* Jonathan Barry Forman, *Fully Funded Pensions*, 103 Marq. L. Rev. 1205, 1302 (2020)("The rules governing IRAs are even more relaxed: an individual with an IRA is free to spend the balance in her account as she wishes and, furthermore, is free to designate whoever she wants as her beneficiary").

If a state's law provides that individuals in a civil union or domestic partnership have a right comparable to individuals in a marriage, the state should insert the appropriate terms in addition to "spouse."

Section 9. Principles of Law and Equity

The principles of law and equity supplement this [act] except to the extent inconsistent with this [act].

Section 10. Uniformity of Application and Construction

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

Section 11. Relation to Electronic Signatures in Global and National Commerce Act

This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit, or supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

Legislative Note: *It is the intent of this act to incorporate future amendments to the cited federal law. A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase ", as amended". A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.*

Section 12. Transitional Provisions

(a) This [act] applies to a cohabitants' agreement made [before,] on[,] or after [the effective date of this [act]].

(b) This [act] applies to an equitable claim under this [act] that accrues [before,] on[,] or after [the effective date of this [act]].

Legislative Note: *A state that previously has not recognized a claim between cohabitants based on contract or in equity arising from contributions to their relationship may choose to apply this act only to a claim that accrues on or after the effective date.*

Comment

UCERA contemplates that the results reached on claims of cohabitants enabled under UCERA will accord with results reached in cases involving non-cohabitant litigants. UCERA does not set out unique procedural or substantive prerequisites to the validity of cohabitants' agreements (unlike, for example, the Uniform Premarital and Marital Agreements Act) or to their claims. Similarly by ensuring that equitable claims between cohabitants are enabled, UCERA seeks only fairness for cohabitants and assurance that a cohabitant will be treated as any other non-cohabitant litigant. Therefore this section provides that UCERA applies to cohabitants' agreements whenever made and to equitable claims even if the cohabitation occurred and terminated prior to the effective date. The fact that the cohabitation terminated before the effective date of UCERA is irrelevant to the validity of the claim. However, any claim under

UCERA, whether based in contract or equity, may be barred by expiration of the time limitation within which similar claims could be brought in accordance with other state law, as provided in Section 5.

For states in which UCERA is believed to represent a significant change in the law governing cohabitants' claims, an enacting state could provide for prospective application of UCERA only. See *Legislative Note* to this section. However, in states that have not previously recognized either contractual or equitable claims between cohabitants, retroactive application may be legally justified. Courts have upheld the retroactivity of statutes based on a variety of significant state interests, many of which could apply to cohabitants' claims.

In *Rothman v. Rothman*, 320 A.2d 496, 499–500 (N.J. 1974), upholding the validity of retroactive application of an equitable distribution statute the court said:

> [a] state may, in the exercise of the police power, enact a statute to promote the public health, safety, morals or general welfare. Such a statute, because of retroactive application or otherwise, may diminish in value or totally destroy an individual's right, whether in property as such or arising our [sic] of contract, provided that the public interest to be promoted sufficiently outweighs in importance the private right which is impaired.

Rothman, supra, at 499. See also *In re Marriage of Bouquet*, 546 P.2d 1371, 1372 (Cal.1976)(community and separate marital property context); *Ryan v. Ryan,* 277 So. 2d 266, 273 (Fla. 1973)(constitutionality of retroactive application of no-fault divorce law).

[Section 13. Severability

If a provision of this [act] or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]

Legislative Note: *Include this section only if the state lacks a general severability statute or a decision by the highest court of the state adopting a general rule of severability.*

[Section 14. Repeals; Conforming Amendments

(a) . . .

(b) . . .]

Legislative Note: *A state should examine its statutes to determine whether repeals or conforming revisions are required by provisions of this act relating to accrual of an equitable claim. See Section 7(b). A state also should consider whether modification to other law is desirable to reflect the state's public policy regarding domestic partnerships or civil unions.*

Section 15. Effective Date

This [act] takes effect . . .