

Memorandum
In Preparation for Our Drafting Session on Saturday, October 24

October 19, 2020

Attached you will find a new draft of “section 11.” You will note straightaway that we have created a new Article for the equitable division portion of the Act. That may turn out to be helpful or terrible but we need not think about that now; which one will become apparent as we progress. For example, Section 2-101 defines “cohabitant” and “property.” Those definitions may move to a general definition section, or not, depending on how the Act turns out.

Immediately following many of the sections of Article 2, we have set out questions for your consideration. You will have others, but we wanted to give you a running start.

On October 24, we will read and discuss Article 2 line by line. We believe (hope!) that we have largely followed the direction that the committee wanted to go.

We provide a definition that claimants must meet in order to have a claim, describing in broad terms the standard a court would apply to adjudicate the claim, and a list of factors to guide the court in its decision-making. A list of factors could be substituted for the definition of the claimants themselves, as the ALI does, but we thought having two lists of factors would be long and confusing. The ALI has factors that are used to decide who may pass through the gate but then divides property largely as if the claimants were married under state law; we thought that was a bridge too far for this act, and opted instead for a generalized “do justice” approach with factors to guide the court.

Our hope is that we will make good progress on Article 2 on the 24th. Shortly thereafter you will receive two versions of Article 1. One version will affirm that all individuals may contract with one another and pursue equitable claims against one another, even if they live together, are in an intimate relationship, etc. A second version will make that same affirmation only with respect to certain individuals who are defined (as “cohabitants”, who live together etc.) and will leave other individuals out of the act entirely. So, on November 6 and 7, when we have our “official” Fall drafting meeting, we will choose between those two approaches for Article 1, and then we will examine how Article 1 and Article 2 relate to one another.

As always, we hope we are proceeding in an orderly way, look forward to your thoughts and comments (before, during, and after our meetings), and express again our appreciation for your interest, assistance, and wisdom. We are terribly sorry that we will not be together in person on November 6 and 7, but to make ourselves feel better we have adopted a strategy that we urge on you: imagine the meeting were scheduled in your least favorite US city to visit in November. See, you feel better already.

See you soon.

Mary, Turney, Naomi