

DRAFT
FOR DISCUSSION ONLY

ECONOMIC RIGHTS OF UNMARRIED COHABITANTS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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VERSION 2 DRAFT



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November 2, 2020

ECONOMIC RIGHTS OF UNMARRIED COHABITANTS ACT

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ECONOMIC RIGHTS OF UNMARRIED COHABITANTS ACT

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ECONOMIC INTERESTS OF UNMARRIED COHABITANTS ACT (Version 2)

SECTION 1. SHORT TITLE. This [act] may be cited as the [Uniform] Economic Interests of Unmarried Cohabitants Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Cohabitant” means each of two individuals not married to each other who after each has reached the age of majority or been emancipated, live together as a couple [in an intimate or romantic relationship]. The term includes a conservator, custodian, or guardian for a cohabitant and the personal representative for a cohabitant’s estate. The term does not include an individual in an incestuous relationship.

(2) “Cohabitation agreement” means an agreement between two cohabitants regarding the management, allocation, disposition, or waiver of a cohabitant’s economic interest. A cohabitation agreement may be in a record, oral, or implied-in-fact.

(3) “Domestic services” means services and activities performed for the shared household by a cohabitant which benefit the other cohabitant or the cohabitants’ relationship. The term includes cooking, cleaning, shopping, household maintenance and doing errands for the benefit of the other cohabitant or the cohabitants’ relationship, and otherwise caring for the other cohabitant or a family member of the other cohabitant. The term does not include sexual services.

(4) “Economic interest” means a right, interest, duty, promise, or obligation of a cohabitant relating to domestic services or property.

(5) “Individual” means a natural person age 18 or over.

(6) “Property” means anything that may be the subject of ownership, whether real or personal, tangible or intangible, legal or equitable, or any interest therein.

(7) “Qualified cohabitant” means each of two cohabitants who, for a substantially continuous period of at least [three years], share their economic interests while living together as a couple.

(8) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(10) “Termination of cohabitation” means the earliest of:

(A) the death of a cohabitant;

(B) the date the cohabitants’ relationship is irretrievably broken; or

(C) the date the cohabitants marry each other.

SECTION 3. SCOPE.

(a) This [act] applies to the recognition and enforcement of economic interests that arise by virtue of a cohabitation agreement or under circumstances in which equity requires a remedy.

(b) This [act] does not affect:

(1) application of the doctrine of common law marriage to the extent [recognized] [prohibited] by this state; or

(2) any right, interest, duty, obligation, or remedy of a cohabitant which arises under the law of this state other than this [act].

SECTION 4. GOVERNING LAW.

(a) Unless otherwise specified in a cohabitation agreement or this [act], a claim to enforce an economic interest is governed by the law of this state other than this [act], including this state’s

choice-of-law rules.

(b) The rights and remedies provided to cohabitants by this [act] are not exclusive, and the law of this state and principles of equity supplement the [act].

SECTION 5. AGREEMENTS AND CLAIMS BETWEEN COHABITANTS.

(a) Cohabitants may enter into an agreement with and bring equitable claims against each other to the same extent as other individuals under the law of this state other than this [act].

(b) Domestic services may provide consideration for a cohabitation agreement. Equitable claims between cohabitants may be predicated on the provision of domestic services.

(c) A claim for breach of a cohabitation agreement accrues on breach. The claim may be commenced by filing [within the statute of limitations applicable to the claim under law of this state other than this [act]] during cohabitation or after termination of cohabitation.

(d) A claim for equitable relief accrues on termination of cohabitation.

SECTION 6. EQUITABLE DIVISION OF PROPERTY AND APPORTIONMENT OF LIABILITIES.

(a) Unless inconsistent with an enforceable agreement between the cohabitants entered into at any time, or unless there is an express waiver by a cohabitant in a record of the right to claim an interest in the property, upon proper [motion/petition] of a qualified cohabitant, a court may order equitable division of any property acquired as the result of the efforts of either cohabitant during their cohabitation.

(b) Unless inconsistent with an enforceable agreement between the cohabitants entered into at any time, upon proper [motion/petition] of a qualified cohabitant, a court may order equitable apportionment of responsibility for a liability incurred by either cohabitant during their cohabitation, upon finding that the liability benefited both cohabitants.

(c) Equitable division or apportionment is not required under this section. A court may not presume that any particular division or apportionment is equitable.

(d) In ordering equitable division under subsection (a) and apportionment under subsection (b), the court shall consider the following:

(1) other remedies available to either qualified cohabitant regarding the property or liability to be divided or apportioned under an agreement between them or in equity;

(2) each cohabitant's contribution to the provision of housing, food, clothing, health care, and other daily living expenses of the household, and performance of domestic services during the cohabitation;

(3) the duration and continuity of the cohabitation;

(4) whether and to what extent a cohabitant intended to share property or liabilities with the other cohabitant during or upon termination of the cohabitation;

(5) the age and stage of life and the physical and mental condition of each qualified cohabitant;

(6) legal title to the property and legal responsibility for a liability;

(7) the rights and interests of a third party, including a qualified cohabitant's spouse or children, in the property or the liability;

(8) whether a cohabitant has wasted property or transferred property to a third party in an effort to defeat a right or interest of the other cohabitant;

(9) whether the property or liability results from an increase or decrease in value of property held or a liability incurred by a cohabitant prior to the cohabitation, and resulted from the efforts of either cohabitant at any time during the cohabitation;

(10) whether the property was acquired by inheritance or gift;

(11) the tax consequences of any division or apportionment to either qualified cohabitant; and

(12) other factors the court considers relevant.

(e) The remedy ordered under this section may not provide greater rights to a qualified cohabitant than that qualified cohabitant would have received upon divorce, dissolution, or death, if the cohabitants had married on the date the cohabitation began and remained married until a qualified cohabitant died or filed a claim under this section.

(f) A claim under this section shall be brought in a [[court of general jurisdiction] or [family law court]].

SECTION 7. UNENFORCEABLE TERMS OF AN AGREEMENT BETWEEN QUALIFIED COHABITANTS.

(a) A court may refuse to enforce an agreement between qualified cohabitants affecting their rights and liabilities if, in the context of the agreement taken as a whole[:][,]

[(1)] the term was unconscionable at the time the agreement was made[; or

(2) enforcement of the term would result in substantial economic hardship for a qualified cohabitant because of a material change in circumstances arising after the agreement was made].

(b) A term in an agreement between qualified cohabitants affecting the rights and obligations under Section 6 is not enforceable to the extent that it adversely affects a child's right to support.

(c) A court shall decide questions of unconscionability [or substantial economic hardship] under subsection (a) as a matter of law.

SECTION 8. EFFECT OF COURT ORDER OR JUDGMENT ON THIRD PARTIES.

(a) A court order or judgment entered with respect to a claim made under this [act], including division of property or apportionment of liabilities under Section 6, may not impair the rights of a good faith purchaser from, or secured creditor of, a cohabitant or a spouse [or a child] of a cohabitant.

(b) A surviving spouse's claim in probate is superior to the rights of a cohabitant as determined by a court order or judgment entered pursuant to this [act].

SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 10. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 11. SAVINGS AND TRANSITIONAL PROVISIONS.

(a) This [act] does not affect the validity or effect of a cohabitation agreement made before [the effective date of this [act]].

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

1 **[SECTION 12. REPEALS; CONFORMING AMENDMENTS.**

2 (a)

3 (b)

4 (c)]

5 **SECTION 13. EFFECTIVE DATE.** This [act] takes effect