

Origins of the ERUCA Drafting Committee

The ERUCA project results from a proposal submitted by the Joint Editorial Board for Uniform Family Law (JEB-UFL) and the Joint Editorial Board for Uniform Trust and Estate Acts (JEB-UTEA) [not dated]. In 2017, acting on the joint JEB recommendation, the Executive Committee appointed a study committee to explore the feasibility and appropriateness of a drafting project on the Economic Rights of Unmarried Cohabitants. Following the Study Committee report of November 2017 recommending the appointment of a drafting committee to develop a uniform or model law, the Scope and Program Committee, by letter of February 2, 2018, expressed concerns. The Committee did not agree with some of the possible solutions proposed by the Study Committee, specifically rejecting the “opt-in” approach in which individuals register with a system that provides defined economic benefits, duties, and privileges for registrants. In addition, the Scope and Program Committee asked the Study Committee to report back with a recommendation that specifically addressed the criteria for drafting new acts, as well as clarification on the question of “whether any act on this subject would create dissonance with rights and obligations found in existing law.” Responding to these concerns, the May 2, 2018 Study Committee’s second report noted the following:

1. “The subject matter is at the core of contemporary family law, a field in which uniform law has long been associated with vital reforms. There are no federal laws and regulations dealing with the rights of cohabitants upon dissolution or death; in fact, federal law is clear that federal statutes applicable to marriage apply only if the parties actually are married.”
2. “[A] model or uniform act would be consistent with the common law trend in a majority of states in recognizing rights and would thus be unlikely to disrupt existing rights and obligations [and] would have the benefit of providing clarity and certainty.”
3. “[The] body of court decisions in the states has highlighted the strengths and weaknesses of various aspects of existing state approaches, such that states may be receptive to a uniform or model law that incorporates “best practices” and wise policy. Indeed, courts often express the desire for legislative guidance in addressing cases involving cohabitants’ rights.”

Subsequently, upon recommendation of committee on Scope and Program, the Executive Committee determined that “...a Drafting Committee on the Economic Rights of Unmarried Cohabitants [would] be formed.” The Drafting Committee’s first meeting was held by telephone in January of 2019.