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# ECONOMIC RIGHTS OF UNMARRIED COHABITANTS ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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Sept. ~~August 24~~ 21, 2020

## **ECONOMIC RIGHTS OF UNMARRIED COHABITANTS ACT**

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# ECONOMIC RIGHTS OF UNMARRIED COHABITANTS ACT

## TABLE OF CONTENTS

SECTION 1. SHORT TITLE. ....	1
SECTION 2. DEFINITIONS. ....	1
SECTION 3. SCOPE. ....	2
SECTION 4. GOVERNING LAW. ....	2
SECTION 5. TREATMENT OF COHABITANTS' CLAIMS. ....	3
SECTION 6. COHABITATION AGREEMENT. ....	3
SECTION 7. CLAIM TO ENFORCE ECONOMIC RIGHTS. ....	4
SECTION 8. BURDEN OF PROOF. ....	<del>5</del> 5
SECTION 9. UNENFORCEABLE TERMS. ....	5
SECTION 10. EQUITABLE CLAIMS. ....	<del>6</del> 6
SECTION 11. EQUITABLE DIVISION OF PROPERTY. ....	<del>6</del> 6
SECTION 12. LIMITATIONS ON RIGHTS AND REMEDIES. ....	7
SECTION 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION. ....	7
SECTION 15. SAVINGS AND TRANSITIONAL PROVISIONS. ....	<del>8</del> 8
[SECTION 16. REPEALS; CONFORMING AMENDMENTS]. ....	8
SECTION 17. EFFECTIVE DATE. ....	8

1                   **ECONOMIC RIGHTS OF UNMARRIED COHABITANTS ACT**

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

4                   All Comments Deleted For This Draft Only]

5                   **SECTION 2. DEFINITIONS.** In this [act]:

6                   (1) “Cohabitant” means each of two individuals who are not married to each other and  
7 live together as a couple in an intimate, committed relationship and function as an economic,  
8 social, and domestic unit.

9                   (2) “Cohabitation agreement” means an agreement between two cohabitants regarding the  
10 management, allocation, disposition, or waiver of a cohabitant’s economic right.

11                   (3) “Domestic services” means services and activities performed for the household by a  
12 cohabitant for the benefit of the other cohabitant or the cohabitants’ relationship. The term  
13 includes cooking, cleaning, shopping, household maintenance, ~~doing errands, and~~ and doing  
14 errands for the benefit of the other cohabitant or the cohabitants’ relationship, and otherwise  
15 caring for the other cohabitant or a family member of the other cohabitant.

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

18                   (5) “Property” means anything that may be the subject of ownership ~~or any interest in the~~  
19 ~~thing~~, whether real or personal, tangible or intangible, legal or equitable. ~~The term includes a~~  
20 ~~financial obligation or asset, or any interest therein.~~

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

23                   (7) “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.

### SECTION 3. SCOPE.

(a) This [act] applies to the recognition and enforcement of economic rights between two cohabitants that arise:

(1) by virtue of a cohabitation agreement; or

(2) 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 or prohibited by this state; or

(2) a an economic right, duty, or remedy of a cohabitant under the law of this state other than this [act], except to the extent inconsistent with this [act].

### ~~SECTION 4. EFFECT OF MARRIAGE.~~

~~(a) The [act]~~ (c) This act does not apply to a claim between cohabitants whose marriage to each other would not be recognized by this [state] if the cohabitants were to marry.

~~(b) Subject to Section 12(b), except~~ if a cohabitant is married to another individual, ~~the~~ this [act] including the limitations of Section 12(b) applies to a claim between the cohabitants, unless the cohabitants' marriage to each other would not be recognized by this state for a reason other than the ~~cohabitant's~~ cohabitants' marriage.

### SECTION ~~5.~~ 4. GOVERNING LAW.

~~(a) Except as otherwise provided under subsection (b), Section 8) and Sections 7(d), Section 9, 8, and Section 12, 11 a~~ A claim to enforce an economic right is governed by the law of this state, including this state's choice-of-law rules, except:

1 (1) As otherwise specified in a cohabitation agreement as provided in subsection (b);

2 (2) With respect to the effect of the marriage of the cohabitants on the statute of

3 limitations as provided in Section 7 (d);

4 (3) With respect to the burden of proof as provided in Section 8 regarding oral or

5 implied-in-fact cohabitation agreements or equitable claims; and

6 (4) As provided in Section 11 regarding the remedy of equitable division of certain

7 property.

8 (b) A cohabitation agreement may designate the law of a jurisdiction which governs the  
9 validity, enforceability, interpretation, and construction of the agreement if:

10 (1) the jurisdiction has a significant relationship to the agreement or either  
11 cohabitant; and

12 (2) the designated law is not contrary to ~~fundamental~~ the public policy of this  
13 state.

14 (c) The rights and remedies provided by this [act] are not exclusive, and the common law  
15 of this state and principles of equity supplement this [act].

16 **SECTION ~~6~~ 5. TREATMENT OF COHABITANTS' CLAIMS.** Except as otherwise  
17 provided under Sections ~~98~~ and ~~12~~, 11, a claim between two individuals ~~shall~~ may not be  
18 precluded or ~~be~~ subjected to an additional procedural or substantive ~~hurdle on account of the~~  
19 ~~individuals being current or previous cohabitants.~~ Requirement solely because the individuals  
20 were or are cohabitants.

21 **SECTION ~~7~~ 6. COHABITATION AGREEMENT.**

22 (a) (a)-A cohabitation agreement entered into in any state and sought to be enforced in  
23 this state:

(1) ~~(1)~~ is not void as against ~~public policy~~ the public policy of this state solely  
because the parties to the agreement are or were cohabitants; and

~~(2) (2)~~ may be in a record, oral, or implied-in-fact.

~~(b) (b)~~ A cohabitant's contribution of domestic services or the contribution of property  
for the benefit of the other cohabitant or the cohabitants' relationship is ~~sufficient~~  
consideration for a cohabitation agreement.

#### **SECTION ~~8~~7. CLAIM TO ENFORCE ECONOMIC RIGHTS.**

(a) In this section, "termination of cohabitation" means the earliest of:

(1) the death of a cohabitant;

(2) the date the cohabitants' relationship is irretrievably broken; or

(3) the date the cohabitants marry each other.

(b) A claim for breach of a cohabitation agreement accrues on breach and may be  
commenced, within the ~~applicable statute of~~ limitations period applicable to the claim, during  
cohabitation, or after termination of cohabitation.

(c) A claim for equitable relief under Section 11 or 12 accrues on termination of  
cohabitation.

(d) If cohabitants marry each other, the marriage:

(1) terminates the accrual under this [act] of any additional rights between the  
cohabitants;

(2) tolls the statute of limitations on a claim for breach of a cohabitation  
agreement until either cohabitant dies or files for [separation,] dissolution[,], or divorce; and

(3) extends the time for filing an equitable claim until either cohabitant dies or  
files for [separation,] dissolution[,], or divorce.

(e) A cohabitant may assert in the same action a claim for relief in equity and a claim based on a cohabitation agreement.

**Legislative Note:** In subsection (d), a state should include “separation” if the filing of a separation action terminates the marital community under the state’s laws.

**SECTION 9.8. BURDEN OF PROOF.** The burden of proof to establish:

(1) the existence and terms of a cohabitation agreement in a record is governed by law of this state other than this [act] applicable to an express agreement;

(2) the existence and terms of an oral or implied-in-fact cohabitation agreement is clear and convincing evidence;

(3) the elements of an equitable claim under Section 10.4 is a preponderance of the evidence; and

(4) the elements of an equitable claim under Section 11.2 is clear and convincing evidence.

**SECTION ~~10.9.~~ UNENFORCEABLE TERMS.**

(a) A court may refuse to enforce a term in a cohabitation agreement 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 cohabitant because of a material change in circumstances arising after the agreement was made].

(b) A term in a cohabitation agreement is not enforceable to the extent that it:

(1) limits operates to limit or restriets restrict a remedy available for a cohabitant who is a victim of domestic violence, sexual assault, or stalking under law of this state other than this [act]; or

(2) adversely affects a child’s right to support.



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

**SECTION 10. ~~SECTION 11.~~ EQUITABLE CLAIMS.** Except as otherwise provided in an enforceable cohabitation agreement, a court may enforce a claim by a cohabitant ~~may assert and a court may enforce an equitable claim, including a claim for~~ that is based in equity, whether promissory estoppel, unjust enrichment, based on or otherwise. The performance of domestic services may be the sole basis for such a claim.

**~~SECTION 12.~~ SECTION 11. EQUITABLE DIVISION OF PROPERTY.**

(a) Except as otherwise provided in subsection (b) or in an enforceable cohabitation agreement, a cohabitant may assert a claim for, and a court may order, fair and equitable division of property acquired and liabilities incurred as a result of the efforts of either cohabitant during cohabitation, without regard to a cohabitant's legal title to the property.

(b) A cohabitant who is married to another individual may ~~not~~ only assert a claim under subsection (a) ~~except~~ with respect to property acquired and liabilities incurred as a result of the efforts of either cohabitant (i) during the cohabitation but and (ii) before that the cohabitant's marriage.

(c) An unmarried cohabitant cohabiting with a married cohabitant may assert a claim under subsection (a) against the married cohabitant.

(d) The court shall consider the following to determine whether and how to order a fair and equitable division of assets and liabilities under subsection (a):

(1) the duration and continuity of the cohabitation;

(2) the cohabitants' allocation of financial responsibility for housing, food, clothing, health care, and other daily living expenses of the household;

(3) the cohabitants' allocation of responsibility for the performance of domestic services;

(4) the cohabitants' allocation of caretaking responsibility for a family member of either cohabitant;

(5) the cohabitants' intent to share with one another assets acquired or liabilities incurred during the cohabitation;

(6) whether the property being considered for division is subject to interests of a third party;

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

(8) if a cohabitant is married, the rights and interest of the married cohabitant's spouse; and

(9) other factors the court considers relevant.

(e) A court may not presume that any particular percentage of division of assets or liabilities is equitable.

## **SECTION ~~13~~ 12. LIMITATIONS ON RIGHTS AND- REMEDIES.**

(a) The rights and remedies under this [act] granted to a cohabitant may not be greater than the rights and remedies the cohabitant would receive on divorce, dissolution, or death, if the cohabitants had married.

(b) Neither this [act~~13~~], nor a division of assets or liabilities under this [act~~13~~] affects the right of a third party, including a good faith purchaser from, or secured creditor of, a cohabitant.

## **SECTION ~~14~~ 13. 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 ~~15~~ 14. 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 ~~15~~ 16. 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]].

**[SECTION ~~17~~ 16. REPEALS; CONFORMING AMENDMENTS.**

(a) . . . .

(b) . . . .

(c) . . . .]

**SECTION ~~18~~ 17. EFFECTIVE DATE.** This [act] takes effect . . . .