

DRAFT
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Uniform Cohabitants' Economic Remedies Act

Uniform Law Commission

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Uniform Cohabitants' Economic Remedies Act

The Committee appointed by and representing the Uniform Law Commission in preparing this act consists of the following individuals:

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Other Participants

Naomi Cahn	District of Columbia, <i>Reporter</i>
Laura Morgan	Massachusetts, <i>American Bar Association Advisor</i>
Andrea J. Boyack	Kansas, <i>American Bar Association Section Advisor</i>
Elizabeth Lindsay-Ochoa	Massachusetts, <i>American Bar Association Section Advisor</i>
Mark J. Cutrona	Delaware, <i>Style Liaison</i>
Tim Schnabel	Illinois, <i>Executive Director</i>

Copies of this act may be obtained from:

Uniform Law Commission
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
(312) 450-6600
www.uniformlaws.org

Uniform Cohabitants' Economic Remedies Act

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1 **Uniform Cohabitants’ Economic Remedies Act**

2 **Prefatory Note**

3 The Uniform Cohabitants’ Economic Remedies Act (UCERA) provides states with
4 comprehensive and uniform guidance on questions concerning cohabitants’ property interests
5 and other obligations based on their relationship. UCERA is an enabling act that does not create
6 any special status for cohabitants; it enables cohabitants to exercise the usual rights of individual
7 citizens of a state to contract with others and to bring equitable claims against others in
8 appropriate circumstances. The act affirms the capacity of each cohabitant to contract with the
9 other and to claim a contract-based or equitable remedy against the other with respect to
10 “contributions to the relationship” without regard to any intimate relationship that exists between
11 them and without subjecting them to hurdles that would not be imposed on litigants of similar
12 claims. The act ensures that the nature of the relationship of the parties is not a bar to capacity to
13 contract. At the same time, the act recognizes the value of non-sexual services, activities, and
14 efforts of a party to the relationship as a basis for contractual and equitable claims.
15

16 The act responds to the dramatic increase in the number of nonmarital cohabitants in the
17 United States over the past half-century. The Census first began including “Unmarried Partner”
18 as a possible relationship in 1990.¹ Today, more than 17 million people, representing seven
19 percent of American adults, are cohabiting.² More adults have cohabited than have been
20 married.³ The number of older adults who cohabit is growing. In 1996, only two percent of
21 partners in cohabiting households were ages 65 or older; by 2017, that number had tripled to six
22 percent.⁴ Just over 6 percent of partners in cohabiting households earn over \$90,000 per year,
23 while more than half earn less than \$30,000.⁵
24

25 Cohabitants may share financial responsibilities during their cohabitation, or they may
26 keep their finances separate. One cohabitant may move into a dwelling the other had acquired
27 separately. They may acquire property together. Both may work, or one may work and the other
28 might take care of the household. The rights at separation and death that derive from cohabitation
29 have evolved over the past half-century.
30

31 One of the earliest cases in the United States to recognize potential economic rights
32 between nonmarital cohabitants, notwithstanding the nature of their relationship, was the
33 California Supreme Court opinion in *Marvin v. Marvin*.⁶ Before *Marvin*, courts typically rejected
34 claims for support between cohabitants. In *Marvin*, the California Supreme Court held that
35 unmarried cohabitants could enter into enforceable contracts to share earnings or property or for
36 support, notwithstanding the” nature of their cohabitation, so long as the parties’ sexual
37 relationship is not an inseparable part of the agreement. The court identified a broad range of

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 Earners* (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 *Marvin v. Marvin*, 557 P.2d 106 (Cal. 1976).

1 possible remedies such as express or implied contract (including partnership and joint venture)
2 and a cluster of other equitable doctrines such as quantum meruit, constructive trust, resulting
3 trust, unjust enrichment, and equitable lien.
4

5 A number of states have followed *Marvin* in recognizing rights between nonmarital
6 cohabitants, notwithstanding the nature of their relationship, yet states have developed
7 inconsistent approaches to when such rights will be recognized. Some states recognize the
8 potential existence of both express or implied contracts and include equitable claims,⁷ some
9 states have imposed writing requirements on cohabitants' agreements,⁸ and a few states refuse to
10 accept domestic or household services as lawful consideration, reasoning that such services are
11 inextricably intertwined with the sexual relationship and are typically provided without
12 expectation of compensation when a couple shares a home. The Illinois Supreme Court in 2016,
13 for example, rejected calls for expanded recognition of claims between unmarried couples,
14 although the state does recognize claims between nonmarital cohabitants when they are
15 independent of the relationship.⁹ The case generated controversy with its emphasis on the state's
16 continuing interest in distinguishing between marital and nonmarital relationships, and its
17 suggestion that the appropriate source for change was the state legislature, not the courts.¹⁰
18

19 The most ambitious effort to recognize broad obligations among cohabitants came from
20 the American Law Institute's *Principles of Family Dissolution (ALI Principles)* in 2002.¹¹ The
21 *ALI Principles* effectively extend the marital remedies of equitable distribution of property and
22 alimony to cohabitants. However, the ALI's approach has not been fully adopted by any state. In
23 the State of Washington, a long-term marriage-like cohabitation with a sharing of finances and
24 other indicia of an interdependent relationship can give rise to a presumptive application of
25 community property principles, both at dissolution and at death, but not to ongoing support
26 obligations.¹² Other countries have enacted legislation similar to the system set out in the *ALI*
27 *Principles*.¹³ As an alternative, some jurisdictions have adopted systems that allow a nonmarital

⁷ E.g., *Boland v. Catalano*, 521 A.2d 142 (Conn. 1987) (endorsing *Marvin* approach, 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).

⁸ 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).

⁹ *Blumenthal v. Brewer*, 69 N.E.3d 834, 856 (Ill. 2016).

¹⁰ *Id.* at 858 (“Until the legislature sees fit to change our interpretation of the public policy in Illinois . . .”).

¹¹ American Law Institute, *Principles of the Law of Family Dissolution: Analyses and Recommendation* (2002).

¹² 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).

¹³ 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

1 couple to opt into various obligations towards one another.¹⁴

2
3 Even in states that do recognize remedies for nonmarital cohabitants, courts may still be
4 reluctant to award relief. In declining to recognize a cohabitant’s claim, courts have often
5 referenced the meretricious nature of the couple’s relationship or a desire to preserve marriage.¹⁵
6 There is thus no predictable result when cohabitants dissolve their relationship or when one
7 cohabitant dies.

8
9 Although there is certainly a movement in the states towards recognition of the rights of
10 nonmarital cohabitants, state variation means these approaches are far from cohesive. This
11 degree of variance from state-to-state leads to a lack of uniformity concerning cohabitants’
12 claims. The act seeks to harmonize these varying approaches by enunciating the basis for
13 nonmarital cohabitants to pursue remedies against one another. In doing so, the Act actually
14 serves two purposes: providing certainty and predictability in the law while protecting the
15 expectations of nonmarital cohabitants. Given that the approaches of many states to nonmarital
16 cohabitants have not yet been codified, the act provides standard language for enactment.

17
18 For purposes of the act, a “cohabitant” is defined as one member of a couple if the two
19 individuals live together “as a couple” and are not married to each other. The term does not set a
20 time limit as to how long the individuals must cohabit in order to meet the definition. A
21 cohabitant might be married to someone else. Each cohabitant must be an adult (or an
22 emancipated minor).

23
24 Living as a couple does not require that the relationship have a sexual element.
25 Roommates and siblings have traditionally not faced barriers to asserting claims because of their
26 relationships, and, accordingly, the act is intended to remove barriers for those who have faced
27 such barriers. It focuses on allowing cohabitants to bring contractual and equitable claims
28 against one another, regardless of the intimate nature of their relationship. The act ensures that
29 the nature of the parties’ relationship is not a bar to their ability to bring claims against one
30 another, and it recognizes that contractual and equitable claims can be based on the provision of
31 non-sexual services, activities, and efforts by a party to the relationship. Courts do not always
32 recognize such domestic services as an adequate basis for recovery, reasoning instead that they
33 are part of the cohabiting relationship and are thus rendered gratuitously.¹⁶

[<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)

¹⁴ E.g., C.R.S.A. § 15-22-104 (2021); 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 structures).

¹⁵ 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).

¹⁶ 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

1 The act protects the legal rights of third parties to the cohabitation. The interests of
2 secured creditors of, or good faith purchasers from, a cohabitant, cannot be adversely impacted
3 by a remedy granted under the act. A cohabitant married to a third party may be subject to any
4 claim by the other cohabitant, but optional provisions are included in Section 8 for those states
5 choosing to address protection of the spouse’s rights and interests in the property of the married
6 cohabitant. A claim under this act does not affect a child support obligation.
7

8 The remedies provided in this act are not the only remedies available to cohabitants.
9 Cohabitants may have claims against one another based on other state law that are not covered
10 by the act, including, for example, tort claims and partnership claims. The act, in most instances,
11 supplements and does not replace existing state law. An enacting state’s procedural law will
12 generally govern the claims between cohabitants.
13

14 The act does not include a definition of court, nor does the act prescribe the court in
15 which claims between cohabitants may be heard. States may decide that claims between
16 cohabitants should be heard in general civil or family court. Other state law in an enacting state
17 will govern whether these claims between living cohabitants are treated as general equitable and
18 contract claims between individuals who just happen to be cohabitants or as claims that are
19 similar to those heard by family courts. Claims involving deceased cohabitants should be heard
20 in the court that handles settlement of decedents’ estates and handled as a general claim against
21 the decedent’s estate. There is no need to obtain a judgment in civil or family court first, unless
22 otherwise required under state law.
23

24 The act does not address tort suits based on consortium, wrongful death, or infliction of
25 emotional distress claims but defers to other state laws on such claims.
26

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*, 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).

1 **Uniform Cohabitants' Economic Remedies Act**

2 **Section 1. Title**

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

4 **Section 2. Definitions**

5 In this [act]:

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

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

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

15 (A) includes:

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

19 (ii) otherwise caring for the other cohabitant, a child in common,
20 or another family member of the other cohabitant.

21 (B) does not include sexual relations.

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

1 responsibility for a debt.

2 (5) “Record” means information:

3 (A) inscribed on a tangible medium; or

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

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

9 (7) “Termination of cohabitation” means the earliest of:

10 (A) the death of a cohabitant;

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

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

13 **Comment**

14 The definition of “cohabitant” specifies to whom the act applies. The parties cannot be in
15 a common law or other lawful marriage to each other and still be considered cohabitants. A
16 cohabitant may be an emancipated minor under the age of 18 years if otherwise eligible to marry
17 under state law. The definition specifies and thus limits application of the act to cohabitating
18 couples rather than to relationships of more than two people. The definition also requires that the
19 cohabitants live with one another, so it does not cover couples who are clearly “living apart
20 together.” Cynthia Grant Bowman, *How Should the Law Treat Couples Who Live Apart*
21 *Together?*, 29 Child & Fam. L.Q. 335, 335-36 (2018). Finally, the cohabitants must live
22 together as a couple. Living together as a couple does not require that the relationship have a
23 sexual element. Roommates and siblings have traditionally not faced barriers to asserting claims
24 because of their relationships, and accordingly, the act is intended to remove barriers for those
25 who have previously faced such barriers. If each cohabitant is unmarried, they should be
26 otherwise eligible to marry one another under the law of the state in which they cohabit and the
27 rights sought to be enforced attach.

28
29 Because the act provides rights only to cohabitants as defined herein, it does not cover
30 minors. Consequently, if a minor begins living with a nonmarital partner, the act only provides
31 rights that start once the minor reaches the age of majority. The minor may well have rights
32 outside of the act, and, if so, those are preserved.

33

1 Although cohabitants cannot be married to each other, either of them might be married to
2 a third party. Existing cases (typically) do not differentiate between a cohabitant who is married
3 and one who is not in terms of potential remedies. *E.g., In re Est. of Roccamonte*, 808 A.2d 838,
4 841 (N.J. 2002) (estate of deceased married cohabitant liable to nonmarital cohabitant for
5 support); Barbara Atwood & Naomi Cahn, *Nonmarital Cohabitation: The US Approach*, ___
6 Houston J. Intl. L. ___ (forthcoming 2021)(listing married cohabitant cases). In a somewhat
7 analogous situation, the Uniform Marriage and Divorce Act recognizes the concept of a “putative
8 spouse” who may have rights against a married partner. See UMDA § 209. The inclusion of
9 married cohabitants is not designed or intended to undercut the rights of the married cohabitant’s
10 spouse but to ensure equity is done between the cohabitants.

11
12 Example 1: A and B are siblings. After their spouses died, A and B moved in together.
13 They have a joint bank account for household expenses, they eat their meals together, and they
14 take care of one another. A and B are not cohabitants within the meaning of the act.

15
16 Example 2: A and B are unmarried and live together. They share expenses of the
17 household. Absent additional proof that A and B are living together as a couple, they are not
18 cohabitants within the meaning of the act.

19
20 Example 3: A, B, and C live together. A and B are a couple, B and C are a couple, A
21 and C are a couple. Nonetheless, the act does not consider A, B, and C together as cohabitants.
22 Thus, A may enter into a contract with, or make an equitable claim against, C, but A, B, and C
23 cannot enter into an agreement under this act. The act defines a cohabitant as “each of two
24 individuals.” If A, B, and C enter into a three-party agreement, they may have claims under
25 other state law.

26
27 Example 4: A and B are cohabiting in State X. A moves to State Y for six months for
28 work but plans to return to State X to live with B after the work ends. While A and B might not
29 have qualified as cohabitants if their relationship had started while they were domiciled in
30 different states, a period of separation does not necessarily end the cohabitation. *See Fleming v.*
31 *Spencer*, 110 Wash. App. 1017 *2 (2002)(“except for career-related absences [of up to one year],
32 they continuously cohabited”). That is, once individuals are living together as a couple,
33 subsequent actions might not disqualify them from being considered cohabitants, even if those
34 actions would have initially prevented the individuals from qualifying as cohabitants.

35
36 Example 5: A and B were married thirty years ago. A moved to a different city twenty
37 years ago and began cohabiting with C. A and C built a business together but titled it in A’s
38 name. If A and C separate, C could assert a claim against A under this act, but B would retain
39 rights as A’s spouse. Section 8 addresses the rights of a spouse in this situation.

40
41 The definition of “contributions to the relationship” is central to the act and is designed to
42 be expansive. For example, in addition to property and domestic services, it also includes
43 activities related to business development, business entertaining, and similar activities for the
44 benefit of the other partner or the relationship generally. *E.g., Hills v. Superior Court (Munoz)*,
45 No. B174068, 2004 WL 1657689, at *6 (Cal. Ct. App. July 26, 2004) (reasoning that female
46 plaintiff’s assertions, including that “she gave up her career and devoted herself to performing

1 household and other domestic services for him so as to aid his business career,” gave rise to
2 triable issues). Contributions to the relationship can provide the basis for both a contractual and
3 an equitable claim under the act.
4

5 Cohabitation often involves sexual conduct. The definition distinguishes contributions to
6 the relationship from sexual services, which are distinct in nature. This definition and Section 4
7 make clear that the existence of a sexual relationship during the cohabitation does not preclude a
8 successful claim under this act; domestic services are not the same as sexual services. For further
9 discussion of the need to distinguish the two, *see* Albertina Antognini, *Nonmarital Contracts*, 73
10 *Stan. L. Rev.* 67 (2021).
11

12 The definition of cohabitants’ agreements ensures that such agreements can include a
13 waiver of rights, including the right to bring an equitable claim under Section 7. The standards
14 for proving such a waiver are the same as for proving any other terms of a cohabitants’
15 agreement. As provided in Section 6, a cohabitants’ agreement may be oral, written, or in a
16 record, express or implied-in-fact.
17

18 The definition of “record” is used within the act with respect to cohabitants’ agreements.
19 Cohabitants’ agreements relate to the exchange of property and services, activities and efforts
20 that are a part of the relationship of living together as a couple. Cohabitants’ agreements need
21 not be in writing, because the nature of cohabiting relationships is informal. The existence of an
22 express agreement may be found in videos, emails, and any other type of information that can be
23 retrieved in a tangible form. A record is not, however, required to establish such agreements:
24 cohabitants’ agreements may be oral or implied-in-fact.
25

26 In defining “termination of cohabitation,” subsection 7(c) refers to the cohabitants’
27 marriage: this includes common law marriage in those states that recognize common law
28 marriage.
29

30 **Section 3. Scope**

31 This [act] applies only to a contractual or equitable claim between cohabitants concerning
32 an interest, promise, or obligation arising from contributions to the relationship. The rights and
33 remedies of cohabitants under this [act] are not exclusive.
34

34 **Comment**

35 In conjunction with Section 4, Section 3 states the overall intent of the act: to remove
36 bars to claims which arise within the framework of a cohabiting relationship, even if the
37 relationship is an intimate, nonmarital one. In general, cohabitants should be treated as other
38 litigants and not be precluded from bringing claims solely because their relationship has an
39 intimate nature. It provides for affirmative recognition of cohabitants’ rights to maintain
40 relationship-based claims. It is intended to overturn decisions prohibiting claims because a
41 cohabiting relationship was meretricious and to overturn decisions that, even if they recognized

1 cohabitants' claims, created hurdles to successful prosecution of those claims. *See, e.g.,*
2 *Antognini, supra.*

3
4 Enforcement of a claim under this act may take a variety of forms and is designed to be
5 expansive.

6
7 Example 1: The parties shared a household. One cohabitant still has property in the
8 household; a court might enjoin one party from access to the residence while adjudicating the
9 property claims.

10
11 Example 2: One party has videos taken during the relationship that a court might order
12 be deleted.

13
14 This section makes clear that a cohabitant may have cognizable rights vis-a-vis the other
15 cohabitant by virtue of other state law (e.g., the state's partnership law); those rights are not lost
16 unless clearly inconsistent with this act. The rights and remedies provided by the act are not
17 intended to be the exclusive rights and remedies afforded to cohabitants.

18
19 This act clearly does not have any effect on state law concerning marriage. Marriage is a
20 formal legal status that is distinct from cohabitation.

21 22 **Section 4. Right of Cohabitant to Bring Action**

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

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

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

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

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

30 (c) An action may be commenced against a deceased cohabitant's estate and adjudicated
31 under this [act] and other law of this state applicable to claims against decedents' estates.

32 **Comment**

33 This section, as well as Section 3, set out the core goals of the act in allowing cohabitants
34 to assert claims against one another in the same manner as other litigants. These provisions
35 abrogate court decisions that have held that cohabitation agreements are void as against public

1 policy. *See, e.g., Blumenthal v. Brewer*, 69 N.E.3d 834, 854 (Ill. 2016), in which the court
2 rejected constructive trust and restitution claims by a long-term cohabitant, noting that although
3 the parties may have contracted independently of their cohabiting relationship, recognition of
4 claims based on their cohabiting relationship would be inconsistent with the legislature’s
5 abolition of common law marriage. In *Gunderson v. Golden*, 360 P.3d 353 (Idaho Ct. App.
6 2015), the court rejected a claim for division of property after a 25-year cohabitation stating
7 “[t]he elimination of common-law marriage, supported by an explicit public policy justification,
8 commands our courts to refrain from enforcing contracts in contravention of clearly declared
9 public policy and from legally recognizing cohabitational relationships in general.” As Section
10 6(b) recognizes, contributions to the relationship can provide a basis for a contractual claim
11 under this act, while Section 7(a) recognizes that such contributions can provide a basis for an
12 equitable claim.

13 Subsection (a) emphasizes that cohabitation and the possibility, likelihood, or actuality of
14 sexual relations between the cohabitants are irrelevant to the validity of their claims. Further, it is
15 designed to ensure that cohabitants may pursue claims against one another in the same manner as
16 other litigants without the imposition of additional hurdles. Cohabitants’ claims are, for
17 example, subject to the same statutes of limitation and burdens of proof as apply to other
18 contractual or equitable claims between individuals under the law of enacting state. Note that the
19 Statute of Frauds invalidates agreements that cannot be performed within one year, but “the
20 enforceability of a contract under the one-year provision does not turn on the actual course of
21 subsequent events, nor on the expectations of the parties as to the probabilities.” Restatement
22 (Second) of Contracts § 130 cmt. (1981). And some jurisdictions allow part performance to
23 serve as reliable enough evidence of the agreement to take it outside the statute. Robert E. Scott
24 and Jody S. Kraus, *Contract Law and Theory* 521 (5th ed. 2013); Jody S. Kraus & Robert E.
25 Scott, *Contract Design and the Structure of Contractual Intent*, 84 N.Y.U. L. Rev. 1023, 1044
26 (2009). Moreover, when a promisor makes a promise “which the promisor should reasonably
27 expect to induce action or forbearance on the part of the promisee or a third person and which
28 does induce the action or forbearance,” then the promise “is enforceable notwithstanding the
29 Statute of Frauds if injustice can be avoided only by enforcement of the promise.” Restatement
30 (Second) of Contracts § 139 (1981). This act assumes the applicability of those exceptions to the
31 statute of frauds.

32 Example: A and B are cohabitants. A works primarily at a business, and B works
33 sometimes in the business but also in the home. A promises to take care of B by providing B a
34 share of the business in return for B taking care of the home. If A and B cohabit for a full year
35 after the promise is made, that is sufficient indicia that the promise was made to remove the
36 agreement from the statute. Moreover, because the promise could be completed within a year,
37 the statute need not apply.

38 Finally, subsection (a) also clarifies that a claim under this act can still be brought, even if
39 the cohabitants marry each other. Notwithstanding the cohabitants’ subsequent marriage to one
40 another, a claim for breach of a contract accrues upon breach while an equitable claim predicated
41 on contributions to the relationship accrues upon termination of cohabitation under Section 7(b).
42 When they marry, cohabitants may want to ensure clarity with respect to their rights in a
43 premarital agreement. See the Uniform Premarital and Marital Agreements Act (2012).

1 Subsections (b) and (c) confirm that claims may be brought against, or on behalf of, the
2 estate of a deceased cohabitant. The enacting state’s procedures governing claims by or against a
3 decedent’s estate will similarly govern any such claim involving cohabitants, although Section 8
4 provides alternatives for states wanting to add some protection for the spouse of a cohabitant.
5

6 **Section 5. Governing Law**

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

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

11 (1) the law of the state designated in the agreement under other law of this state;

12 or

13 (2) in the absence of an effective designation under paragraph (1), the law of this
14 state, including choice-of-law rules.

15 **Comment**

16 This act coordinates with, and does not change, existing state law, except to the extent
17 necessary to recognize that each cohabitant may have legally cognizable interests against the
18 other. State procedural law governing statutes of limitations, choice of law rules, transfers of
19 property, probate proceedings, etc. control, unless otherwise specified in the act. One such
20 specification is the clarity provided regarding when claims under this act accrue.
21

22 For example, Sections 6(c) and 7(b) provide clarity regarding when contractual and
23 equitable claims each accrue. Moreover, because state law governs cohabitants’ claims under
24 the act, unless otherwise provided in this act, the act may change state law that otherwise
25 prevents recognition of contractual or equitable claims between cohabitants where domestic
26 services (in the form of contributions to the relationship) constitute consideration. It may also be
27 that recognition of the value of contributions to the relationship for purposes of enforcing
28 equitable claims may be a change from existing state law.
29

30 The intent is for other state law to supplement the act unless clearly inconsistent with the
31 act. Thus, for example, if the cohabitants have a business agreement with one another, that
32 agreement would be subject to state law that governs such agreements rather than subject to the
33 provisions of this act.
34

35 Subsection (b) provides that, as with most other agreements, a cohabitation agreement
36 can specify a governing law, provided that law has a relationship to either the parties or their
37 agreement, and it is not contrary to the enforcing state’s public policy.

1 Because cohabitants may move between states, the act contemplates that the rights of
2 those cohabitants to bring claims against one another will be preserved if consistent with conflict
3 of law principles.
4

5 Example 1: A and B are cohabitants and live in State X, which has enacted UCERA.
6 After three years in State X, they move to State Y, which has not enacted UCERA. State Y will
7 apply its own choice of law rules to determine the rights between the parties under State X law.
8

9 Example 2: A and B are cohabitants and live in State Y, which has not enacted UCERA.
10 They vacation in State X, which has enacted UCERA. No rights arise under UCERA from the
11 vacation in State X.
12

13 Example 3: A and B are cohabitants and live in State Y for three years. State Y has not
14 enacted UCERA. They move together to State X, which has enacted UCERA. Their relationship
15 then terminates after one day in State X. After the move, A may bring an action in State X
16 against B for claims under UCERA based on their cohabitation in State Y. In adjudicating the
17 claims, a State X court would need to determine whether the public policy of State X should
18 override the public policy of State Y.
19

20 Example 4: A and B are cohabitants and live in State Y for three years. State Y has not
21 enacted UCERA. Their relationship terminates. B remains in State Y, and A moves to State X,
22 which has enacted UCERA. A might be able to bring common law claims, subject to the
23 jurisdiction of State X, but cannot bring a claim under UCERA in State X. This is the result
24 because UCERA does not create new rights but removes barriers to the enforcement of existing
25 rights.
26

27 **Section 6. Cohabitants' Agreements**

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

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

32 (c) A claim for breach of a cohabitants' agreement accrues on breach and may be
33 commenced, subject to [cite to the applicable statute of limitations], during cohabitation or after
34 termination of cohabitation.

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

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

4 **Legislative Note:** Subsection (c) should cite to the state’s statute of limitations on contractual
5 claims.

6
7 Subsection (e) should be modified in a state that does not have a clear definition of “crime of
8 violence”.

9
10 **Comment**

11 Subsection (b) provides that contributions to the relationship may constitute consideration
12 for such an agreement. In the past, some courts have been reluctant to find that domestic
13 services are adequate. See *Antognini, supra*. This clarifies the law for cohabitants. See, e.g.,
14 *Smith v. Carr*, No. CV 12-3251-CAS JCGX, 2012 WL 3962904, at *4 (C.D. Cal. Sept. 10,
15 2012); *Rabinowitz v. Suvillaga*, No. 17 CVS 244, 2019 WL 386853, at *8 (N.C. Super. Jan. 28,
16 2019); *Antognini, supra*, at 108-09; *but see Knauer v. Knauer*, 470 A.2d 553 (Pa. Super. Ct.
17 1983).

18
19 There is no presumption in favor of finding a contract.

20
21 Subsection (c) makes clear that a claim for breach may be brought while the couple is
22 still living together and even though the relationship has not been terminated. It also reiterates
23 the rule of Section 5(a) to specify that the applicable statute of limitations is set by other state
24 law.

25
26 When cohabitation is terminated by death, there may be questions about the
27 enforceability of an agreement concerning a provision to be made – or not to be made – in a will.
28 Sections 3 and 5 provide that claims between cohabitants should be treated comparably to claims
29 between noncohabitants. Issues concerning the enforceability of an agreement to make a
30 provision at death is governed by other state law. An express contract may be covered by
31 Uniform Probate Code Section 2-514 (iii), which permits, for example, “a writing signed by the
32 decedent evidencing the contract” to be enforceable.

33
34 Subsection (d) reiterates the general rule that child support obligations have priority over
35 other claims to the income of the payor. This act will not affect child support determinations or
36 child support obligations.

37
38 Subsection (e) protects the rights of victims of crime. It ensures that their remedial rights
39 relating to the crime are not lost through cohabitation and cannot be the subject of an agreement.
40 For example, a term in an agreement which provided that a cohabitant could not pursue a civil
41 protection order would be voidable. Similarly, a provision in a cohabitation agreement which
42 purported to give a cohabitant a right or interest in payments the other cohabitant received from

1 or through the perpetrator, in an administrative or civil proceeding, would be voidable. A
2 provision in an agreement that would require a crime victim to pursue a civil, criminal, or
3 administrative remedy is also presumed to be coercive and therefore voidable.

4
5 **Section 7. Equitable Relief**

6 (a) In addition to remedies available under other law of this state, a cohabitant may
7 commence an equitable action against the other cohabitant based on contributions to the
8 relationship.

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

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

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

15 (2) the duration and continuity of the cohabitation;

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

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

20 (5) other factors the court considers relevant.

21 **Comment**

22 This section, and, in particular, subsection (a), makes clear that unjust enrichment and
23 other equitable claims available to cohabitants need not be tied to a specific asset, and that such
24 claims may be based on non-monetary contributions to the relationship. See, e.g., *Blumenthal v.*
25 *Brewer, supra*. The section recognizes that other claims, both contract claims and other equitable
26 claims, are available to cohabitants, outside the scope of this act.

27
28 Note that the cohabitants could enter into a valid agreement that would preclude equitable
29 claims such as, for example, an agreement that neither cohabitant could bring claims against the

1 other under the act or in which one cohabitant waived any right to bring such claims.

2
3 Subsection (b) represents an exception to the general policy of the act to defer to other
4 state law. An equitable claim under this act accrues upon termination of cohabitation: death,
5 marriage of the cohabitants, or when the cohabitants stop living together as a couple. It is
6 important, especially in cases in which the cohabitants lived in multiple states, to have a date
7 certain from which the time to bring a claim, as prescribed in other state law, will begin to run.
8 It is at the point of termination that rights, if any, under this act will vest in a cohabitant; other
9 state law will determine whether an action to enforce those claims is timely.

10
11 The act contemplates that courts will consider a range of appropriate forms of relief, such
12 as disgorgement or constructive trust; injunctive relief, and particularly preliminary injunctive
13 relief, which may be critical to preventing dissipation of assets.

14
15 Subsection (c) provides a list of factors to be considered in adjudicating an equitable
16 claim; the list of factors provides guidance and is not designed to restrict a court's consideration
17 of other factors.

18
19 The initial factor seeks to ensure that "contributions to the relationship" are appropriately
20 valued. These contributions are the essence of the sharing and exchange between the parties.
21 Therefore, in equity, this section provides for consideration and evaluation of those contributions
22 not simply by reference to market value. See Candace Saari Kovacic-Fleischer, *Cohabitation*
23 *and the Restatement (Third) of Restitution & Unjust Enrichment*, 68 Wash. & Lee L. Rev. 1407,
24 1426 (2011)(noting that not all services provided during a cohabiting relationship "are market
25 transactions, however, and therefore they are not easily valued"). The value of a homemaker
26 cohabitant's services to the household is more than the hourly rate of a housekeeper or cook.
27 The value of such contributions is not limited by market value. This factor ensures that
28 contributions in the form of services will not be deemed gratuitous, but will be measured by their
29 actual value to the other cohabitant and to the couple. See *Featherston v. Steinhoff*, 575 N.W.2d
30 6, 10 (Mich. Ct. App. 1997)(presumption of gratuitous services); Restatement (Third) of
31 Restitution and Unjust Enrichment § 28 cmt. d (Am. Law Inst. 2011) (noting that equitable
32 claims "based purely on domestic services are less likely to succeed, because services of this
33 character tend to be classified among the reciprocal contributions normally exchanged between
34 cohabitants whether married or not."). Courts are directed to consider the subjective value of the
35 benefit, as well as the market value. The cohabitant performing the services likely receives
36 benefits from the other cohabitant, which should be valued as well.

37
38 Example: A and B are cohabitants. A takes care of the home and the parties' four
39 children while B starts a successful business and spends little time on any domestic services. At
40 the end of the relationship, A *may have* a claim that the value of A's contributions to the
41 relationship should be half of the value of the successful business. Cf., *Watts v Watts*, 405
42 N.W.2d 305 (Wis. 1987).

43
44 Subsection (c)(2) concerns the duration and continuity of the relationship. Because any
45 cohabiting relationship is covered by the act, the duration of the relationship is important in
46 determining the parties' reasonable expectations and the nature of any relief. Thus, for example,

1 a three-year relationship may result in comparatively minimal unjust enrichment, while a twenty-
2 five-year relationship provides significant opportunity for the occurrence of unjust enrichment.

3
4 Subsection (c)(3) is directed to the reasonable reliance of the cohabitants. Each may have
5 exhibited conduct indicating an intent to maintain separate lives, or there may have been reliance
6 on the other’s conduct. *See, e.g., Marra v. Nazzaro*, 94 N.Y.S.3d 539 (N.Y. City Ct.
7 2018)(enforcing, based on promissory estoppel, defendant’s promise to plaintiff to allow her to
8 live rent-free on his property for a period of months).

9
10 Subsection (c)(4) requires the court to consider evidence relating to the parties’ conduct
11 or statements showing each cohabitant’s intent to share property with the other, both during the
12 relationship or when the relationship ends or one cohabitant dies. Thus, statements such as “
13 what’s mine, is yours” would be relevant, as would the fact that title to the joint residence
14 remained in the name of one cohabitant. This factor is not intended to be used to grant rights
15 based on the parties’ mere qualification as “cohabitants” as defined in the act.

16
17 Example 1: A and B are cohabitants. Throughout the relationship, they maintain
18 separate bank accounts. A owned a family vacation home that the cohabitants visited several
19 times per year. A court could reasonably conclude there was no intent to share assets.

20
21 Example 2: A and B are cohabitants and share resources with one another. Before the
22 cohabitation, A was married to C, and they had three children. C died several years ago. B was
23 married to D, and they had two children. B and D are divorced. A and B decide to cohabit,
24 rather than to marry one another, because they want to preserve assets for their children from
25 their earlier relationships. Even in the absence of an express waiver of equitable rights, no
26 equitable claim accrues where the evidence showed intent not to share upon termination of the
27 relationship.

28
29 Example 3: A and B are cohabitants. A tells B that A will take care of B for the rest of
30 B’s life. A’s statement indicates an intent to share resources upon termination of the
31 relationship.

32
33 The list of factors included is not exhaustive. Subsection (c)(5) provides a catch-all factor
34 to allow the court to examine fully all relevant equities.

35 36 **Section 8. Effect of Court Order or Judgment on Third Party**

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

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

1 [(c) A court order or judgment concerning [a claim under this [act]] [an equitable claim
2 under Section 7] does not supersede a right or interest of a cohabitant's spouse or surviving
3 spouse to the cohabitant's property[, unless:

4 (1) the spouse had notice of the proceeding and an opportunity to be heard;

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

7 (3) the order or judgment preserves as much of the spouse's right or interest as
8 appropriate].]

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

11
12 *(1) A state that seeks to treat a cohabitant's claim as a general creditor's claim in all cases*
13 *should adopt only subsections 8(a) and (b) and not adopt subsection 8(c).*

14
15 *(2) A state that seeks to insulate a spouse from both contractual and equitable claims of a*
16 *cohabitant should adopt subsection 8(c) so that the subsection will read as follows:*

17
18 *(c) A court order or judgment concerning a claim under this [act] does not supersede a*
19 *right or interest of a cohabitant's spouse or surviving spouse to the cohabitant's*
20 *property.*

21
22 *(3) A state that seeks to insulate a spouse from both contractual and equitable claims of a*
23 *cohabitant but allow a court under certain circumstances to find that justice requires at least*
24 *some satisfaction of the cohabitants' claims even against a married cohabitant will adopt*
25 *Section 8(c) so that the subsection will read as follows:*

26
27 *(c) A court order or judgment concerning a claim under this [act]]does not supersede a*
28 *right or interest of a cohabitant's spouse or surviving spouse to the cohabitant's*
29 *property, unless:*

30
31 *(1) the spouse had notice of the proceeding and an opportunity to be heard;*

32
33 *(2) the court determines, based on the totality of the circumstances, that justice requires*
34 *that all or part of the cohabitant's claim should be satisfied; and*

35
36 *(3) the order or judgment preserves as much of the spouse's right or interest as*
37 *appropriate.*

38

1 *(4) A state that seeks to treat a cohabitant's contractual claim in the same manner as a general*
2 *creditor's claim and insulate a spouse only from an equitable claim under Section 7 should*
3 *adopt subsection 8(c) so that the subsection will read as follows:*

4
5 *(c) A court order or judgment concerning an equitable claim under Section 7 does not*
6 *supersede a right or interest of a cohabitant's spouse or surviving spouse to the*
7 *cohabitant's property.*

8
9 *(5) A state that seeks to treat a cohabitant's contractual claim in the same manner as a general*
10 *creditor's claim and allow a court under certain circumstances to find that the interest of justice*
11 *requires at least some satisfaction of the cohabitant's equitable claim even against a married*
12 *cohabitant will adopt subsection 8(c) so that the subsection will read as follows:*

13
14 *(c) A court order or judgment concerning an equitable claim under Section 7 does not*
15 *supersede a right or interest of a cohabitant's spouse or surviving spouse to the*
16 *cohabitant's property, unless:*

17
18 *(1) the spouse had notice of the proceeding and an opportunity to be heard;*

19
20 *(2) the court determines, based on the totality of the circumstances, that justice requires*
21 *that all or part of the cohabitant's claim should be satisfied; and*

22
23 *(3) the order or judgment preserves as much of the spouse's right or interest as*
24 *appropriate.*

25 **Comment**

26 The act treats a judgment in favor of a cohabitant as a general creditor claim, regardless
27 of whether that judgment is against a living cohabitant or a deceased cohabitant's estate. Thus,
28 for example, if a state chooses not to adopt subsection (c), a successful cohabitant's claims
29 against a deceased cohabitant's estate will have priority over a surviving spouse of the decedent.
30 This is how the claims of other creditors, such as plumbers or others who provided services to
31 the decedent before death, are treated.

32
33 The act further ensures that secured creditors and good faith purchasers who generally
34 have no notice, constructive or otherwise, of the cohabiting partners' relationship are protected.
35 Priority is granted to their claims over those of a cohabitant.

36
37 Bracketed subsection (c) allows a state to choose whether and how to prioritize a
38 cohabitant's spouse's claims over judgments entered in favor of the other cohabitant, providing
39 several different options for the states. A state might choose to prioritize: 1) the claims of a
40 spouse over both the contractual and equitable claims of a cohabitant; 2) the claims of a spouse
41 over only the equitable claims of a cohabitant. One reason for choosing to permit a cohabitant's
42 contractual claim to be treated like that of a general creditor is because a cohabitant who enters
43 into a contract, even if before the effective date of the act, has notice of those obligations, has
44 voluntarily undertaken them, and accordingly, should be held responsible for those actions, even
45 if that means that a spouse's claim might be diminished.

1 Example: A is married to B. B is cohabiting with C. B executes a will that leaves all of
2 B's property to X, B's brother. B dies. C asserts both equitable and contractual claims under this
3 act to be satisfied from B's estate. A asserts an elective share claim against B's estate. In a state
4 that adopts Section 8(c) with the first set of brackets, only once A's elective share has been
5 satisfied can C's equitable and contractual claims be asserted against any remaining property in
6 the estate. In a state that adopts Section 8(c) with the second set of brackets, thereby prioritizing
7 a spouse's claims only over equitable claims, C's contractual claims would be treated like other
8 creditor claims, potentially reducing the size of the estate against which A can assert an elective
9 share, while C's equitable claims could only be asserted after A's elective share has been
10 satisfied.

11
12 Both options include another set of bracketed provisions that would allow a cohabitant's
13 claims to be treated like those of a general creditor under circumstances in which the spouse had
14 notice and an opportunity to be heard in the proceeding between the cohabitants, and a court
15 determined that justice requires satisfaction of the cohabitant's claims. But even if the court
16 finds that justice requires a remedy for the cohabitant, the court is directed to tailor the remedy to
17 provide as much protection as is appropriate to the spouse's interests. This option recognizes the
18 competing interests of the cohabitant and the spouse but would tip the scale ever so slightly in
19 favor of the spouse if all other things are equal. For example, a court might consider the length of
20 time that the spouse and cohabitant each lived with the individual in common along with the
21 property acquired during each of those periods. *See* UMDA Section 209.

22 23 **Section 9. Principles of Law and Equity**

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

26 **Section 10. Uniformity of Application and Construction**

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

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

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

34 ***Legislative Note:*** *It is the intent of this act to incorporate future amendments to the cited federal*
35 *law. A state in which the constitution or other law does not permit incorporation of future*

1 *amendments when a federal statute is incorporated into state law should omit the phrase “, as*
2 *amended”.* *A state in which, in the absence of a legislative declaration, future amendments are*
3 *incorporated into state law also should omit the phrase.*

4 5 **Section 12. Transitional Provisions**

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

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

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

13 14 **Comment**

15 UCERA is an enabling statute, and Section 12 addresses the effective date of the act. It
16 applies to cohabitants’ agreements that were made before the act’s effective date, as well as those
17 made after that date. The act does not set out procedural or substantive prerequisites to the
18 validity of such agreements (unlike the Uniform Premarital and Marital Agreements Act), and so
19 should not affect agreements that have been entered into before the effective date of the act; the
20 act enables the enforcement of such agreements.

21
22 Similarly, Section 12 provides that the act applies to equitable claims that accrued before
23 the act’s enactment, as well as those that accrue afterwards. The fact that the cohabitation
24 terminated before the effective date of the act is irrelevant to the validity of the claim.
25 Nonetheless, the claim, which accrues upon breach for an agreement or upon termination of the
26 cohabitation, death of one, or marriage of one to the other for equitable claims, may be barred by
27 expiration of the time limitation within which similar claims could be brought in accordance with
28 state law, as provided in Section 5.

29
30 With respect to the constitutionality of the retroactivity of UCERA, this act enables
31 claims that already exist. For states for which UCERA does not serve to enable existing claims,
32 the legislative note provides a suggestion on how to proceed. Of course, even in states which
33 have not previously recognized either contractual or equitable claims, retroactive application
34 would be legally justified. Courts have upheld the retroactivity of statutes based on a state’s
35 police power and other significant state interests. E.g., *In re Marriage of Bouquet*, 546 P.2d
36 1371, 1372 (Cal.1976)(community and separate marital property context); *Ryan v. Ryan*, 277 So.
37 2d 266, 273 (Fla. 1973)(constitutionality of retroactive application of no-fault divorce law);
38 *Rothman v. Rothman*, 320 A.2d 496, 499–500 (N.J. 1974); see *Calleros v. Rural Metro of San*
39 *Diego, Inc.*, 272 Cal. Rptr. 3d 767, 773 (2020), review denied (Mar. 24, 2021)(wage and hours
40 case, setting out factors for constitutionality of retroactive application that interferes with vested

1 rights); Charles B. Hochman, *The Supreme Court and the Constitutionality of Retroactive*
2 *Legislation*, 73 Harv. L. Rev. 692, 696 (1960)(the public interest is a major factor in upholding
3 retroactivity); Jill E. Fisch, *Retroactivity and Legal Change: An Equilibrium Approach*, 110
4 Harv. L. Rev. 1055, 1063 (1997)(noting the Court’s deference to “retroactive legislation”); Kirby
5 Black, Note: *Have Courts Become Too Deferential?: The Constitutionality of Retroactive*
6 *Economic Regulation*, 58 U. Louisville L. Rev. 537, 537 (2020)(suggesting analysis for
7 retroactive legislation). As the *Rothman* court noted in upholding the validity of retroactive
8 application of an equitable distribution statute, “[a] state may, in the exercise of the police power,
9 enact a statute to promote the public health, safety, morals or general welfare. Such a statute,
10 because of retroactive application or otherwise, may diminish in value or totally destroy an
11 individual’s right, whether in property as such or arising our [sic] of contract, provided that the
12 public interest to be promoted sufficiently outweighs in importance the private right which is
13 impaired.” *Id.* UCERA provides remedies based on state interests in protecting reasonable
14 expectations of the parties and preventing unjust enrichment.

15
16 This act is, in large measure, based upon the current practices and is consistent with
17 results that could be reached by proper interpretation of the rules of present law in most states.
18 Thus, the act can be applied, without significant dislocations, to transactions and events that
19 occurred prior to enactment.

20
21 **[Section 13. Repeals; Conforming Amendments]**

22 (a) . . .

23 (b) . . .]

24 **Legislative Note:** *A state should examine its statutes to determine whether conforming revisions*
25 *are required by provisions of this act relating to accrual of an equitable claim. See Section 7(b).*

26
27 **Section 14. Effective Date**

28 This [act] takes effect