

Memorandum
Framing Our Discussion for the October 9 Drafting Committee Meeting

October 2, 2020

Next week (October 9 at 11 am ET), we plan to discuss and resolve issues relating to whether and how to provide an opportunity for cohabitants to claim a marital-like division of property when they break up or one dies. Before we begin, we ask each of you to consider and respond individually to the following survey:

Assuming we develop an act to ensure that (i) “cohabitants” (define as you wish) have full and fair contract and equitable rights, and (ii) domestic services have value for purposes of consideration and determining equities as between the parties:

Should we include a provision which further allows cohabitants a marital-like equitable division of assets upon break up and a marital-like share upon death based on the fact of their cohabitation?

Yes

No

For purposes of answering this question, please don’t get hung up on what conditions would be imposed. Simply consider whether as a policy matter we should include a status-based provision of some sort. Let us know “yes” or “no” via email or phone and in advance of the meeting to help us guide the discussion and plan the meeting. If you are inclined to briefly share your reasoning with us, that would be great.

We have a plan B for the meeting, but assume Plan A is to begin with a discussion of Section 11 in the current draft because all of you are ready, willing, and able to roll up your sleeves and focus on a marital-like division of assets..

Recall that current Section 11 in the first reading/red-line draft is a placeholder. Assuming we will move forward, then among the issues we need to consider are the following:

WHO will be eligible for equitable division? E.g.:

A restrictively defined class of cohabitants (see the definition in the current draft)

A group based upon duration of the relationship/cohabitation

A group based upon specific considerations/factors, such as demonstrated intent of parties to share and others listed in the current draft

Etc.

HOW to restrict the remedy, if at all. E.g.:

When contract and/or equitable remedies are deemed “insufficient”
(define)

When the claimant cohabitant would be rendered dependent absent a
remedy

With protections for good faith purchasers and spouses of cohabitants

Etc.

WHAT property will be subject to division. E.g.:

All property acquired during the relationship or the cohabitation

Exclusions for gifts, inheritance, etc.

Etc.

As a reminder, there is nothing in the charge to the drafting committee or the background work of the Joint JEBs or the Study Committee pushing us in this direction, nor have the states started trending in this direction. However, we do not believe these are reasons for us to avoid developing a really good legislative provision if one is needed.

In closing, we share with you comments on our first reading draft that we recently received from a prominent family law practitioner (not a ULC commissioner) who had just learned of our work. We thought they were funny.

We don't recognize common law marriages or economic or support rights of cohabiting person....[t]o give ANY, and I mean ANY economic rights to unmarried cohabitants will kick the door wide open and make the obligations conferred by marriage meaningless. To hell with NCUSL [sic]..... our state has no business imposing rights on [unmarried parties] in derogation of our long history on the issue. I see no policy reason which has any true merit to change our laws which are clear and promote the policy of marriage. This proposal would be a complete mess. Our long-standing laws and case law have worked well and merit no change. Was this National study committee on drugs? I really wonder.

We only wish he had told us how he really felt about the project!

Thank you!

Mary Devine
Turney Berry
Naomi Cahn