

Drafting suggestions from Harry L Tindall, February 11, 2020

Suggested procedural and substantive provisions for lawsuits between unmarried cohabitants:

Section _____

In a proceeding to divide the property of unmarried cohabitants, the following provisions regarding divorce [dissolution of marriage] , including provisional or temporary orders, shall apply:

1. The law of this state regarding domicile of petitioner or respondent in a divorce;
2. The law of this state regarding venue of a divorce;
3. The law of this state regarding an action to divide property based on the residence of the respondent;
4. The law of this state regarding personal jurisdiction over a nonresident;
5. The court to hear the proceeding;
6. Pleading requirements;
7. Temporary and protective orders;
8. The law of this state requiring joinder of suit for parent-child relationship orders;
9. The law of this state regarding child support orders;
10. Service of papers;
11. Restraining orders and injunctions;
12. Requiring an inventory of assets and liabilities;
13. Application of all applicable rules of civil procedure including discovery;
14. Waiting period for final judgment; and
15. Attorney's fees.

Suggested provision of division of assets and liabilities for unmarried cohabitants:

Section _____

In dividing the assets of unmarried cohabitants, that are not governed by a written cohabitation agreement, the court shall consider the following:

1. Whether the asset was owned before the cohabitation commenced;
2. Whether the asset was acquired by gift, devise or descent;
3. Whether the asset increased in value during marriage due to market fluctuations or due to the efforts of a cohabitant;
4. The personal goodwill of a cohabitant associated with an asset;
5. Whether the asset is restricted, by federal or state law, as to division;
6. Whether the asset, that was owned before marriage, has been commingled with assets of the other cohabitant or with assets acquired during the cohabitation.
7. Whether a cohabitant has wasted assets or transferred assets to a third party in an effort to defeat the other cohabitants; and
8. The appropriate division of assets giving due consideration to the above factors.