Uniform Cohabitants' Economic Remedies Act (UCERA)

Informal Session Draft

Presentation for the Virginia Commissioners for Promotion of Uniformity of Legislation

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Overview & Purpose

- Enables two cohabitants to contract with and bring equitable claims against one another.
  - A core goal of the act is to ensure that cohabitants are treated as other litigants and not precluded from bringing claims solely due to the intimate nature of the relationship.
- Focuses on economic remedies.
- Applies to two individuals who live together as a couple.
- Proposed in response to the dramatic increase in the number of nonmarital cohabitants in the U.S. over the past half-century and lack of consistency among states' approaches to the rights of unmarried cohabitants.
- Unmarried couples that live together often partake in the same arrangements as married couples.

Key Definitions – Section 2.

- "Cohabitant" means each of two individuals not married to each other who live together as a couple after each has reached the age of majority or been emancipated. The term does not include individuals who are too closely related to marry each other legally.
  - Does not require that the relationship have a sexual element.
- "Cohabitants' agreement" means an agreement between individuals concerning contributions to the relationship if the individuals are to become, are, or were cohabitants. The term includes a waiver of rights under the act.

Key Definitions – Section 2.

- "Contributions to the relationship" means contributions of a cohabitant that benefit the other cohabitant, both cohabitants, or the cohabitants' relationship, whether in the form of efforts, activities, services, or property. The term includes:
  - Cooking, cleaning, shopping, household maintenance, conducting errands, or other domestic services for the benefit of the other cohabitant or the cohabitants' relationship; and
  - Otherwise caring for the other cohabitant, a child in common, or another family member of the other cohabitant.
  - Does not include sexual relations.

Scope of Proposed Act – Section 3.

- The act applies only to a contractual or equitable claim between cohabitants concerning an interest, promise, or obligation arising from contributions to the relationship.
- The rights and remedies of cohabitants under the act are not exclusive. Cognizable rights vis-à-vis the other cohabitant by virtue of other state law are not lost unless clearly inconsistent with the act.

Cohabitants' Agreement – Section 6.

- The agreement may be oral, written, or in a record, express or implied-in-fact.
- Contributions to the relationship are sufficient consideration for a cohabitants' agreement.
- A claim for breach of a cohabitants' agreement accrues on breach and may be commenced, subject to the applicable statute of limitations, during cohabitation or after termination of cohabitation.
- The act will not affect child support determinations or child support obligations and protects victims of crime.

Right of Cohabitant to Bring Action – Section 4.

- An individual who is or was a cohabitant may commence an action on a contractual or equitable claim that arises out of contributions to the relationship. The action is not:
  - (1) barred because of a sexual relationship between cohabitants;
  - (2) subject to additional substantive or procedural requirements because the parties are or were cohabitants or because of a sexual relationship between the cohabitants; or
  - (3) extinguished by the marriage of cohabitants to each other.
- Claims may be brought against, or on behalf of, the estate of a deceased cohabitant.

Governing Law – Section 5.

- Except as otherwise provided in the act, a claim under the act is governed by state law, including choice-of-law rules.
- A cohabitation agreement can specify a governing law, provided that law has a relationship to either the parties or their agreement and it is not contrary to the enforcing state's public policy.
- Does not include a definition of court, nor prescribes the court in which claims between cohabitants may be heard.

Equitable Relief – Section 7.

- A cohabitant may commence an equitable action against the other cohabitant based on contributions to the relationship.
- An equitable claim under the act accrues upon termination of cohabitation (deviation from general policy to defer to other state law).
- Provides a list of factors to be considered in adjudicating an equitable claim (guidance only):
  - The nature and value of contributions to the relationship
  - The duration and continuity of the cohabitation
  - Extent of reasonable reliance on conduct of other cohabitant
  - Demonstration of intent to share, or not to share, property
  - Other factors the court considers relevant

Impact on Third Party – Section 8.

- A court order or judgment granting relief under the act against a cohabitant or a cohabitant's estate is an order or judgment in favor of a general creditor (subsection (a)).
- A court order or judgment granting relief under the act does not impair the rights of an earlier good-faith purchaser from, or secured creditor of, a cohabitant (subsection (b)).

Impact on Third Party cont. – Section 8.

- Provides five options for treating claims of a spouse and a cohabitant to a married cohabitant's property:
  - A state that seeks to treat a cohabitant's claim as a general creditor's claim in all cases (only should adopt provisions on previous slide).
  - A state that seeks to insulate a spouse from both contractual and equitable claims of a cohabitant.
  - A state that seeks to insulate a spouse from both contractual and equitable claims of a cohabitant but allow a court under certain circumstances to find that justice requires at least some satisfaction of the cohabitant's claims even against a married cohabitant.
  - A state that seeks to treat a cohabitant's contractual claim in the same manner as a general creditor's claim and insulate a spouse only from an equitable claim under Section 7.
  - A state that seeks to treat a cohabitant's contractual claim in the same manner as a general creditor's claim and allow a court under certain circumstances to find that the interest of justice requires at least some satisfaction of the cohabitant's equitable claim even against a married cohabitant.

Virginia Law

- Virginia does not recognize common law marriage.
- The Code of Virginia does not contain laws providing rights to unmarried cohabitants.
- Unmarried couples may enter into a “cohabitation agreement” and enforce such agreements regarding support, finances, or property in the relationship on the basis of contract principles.
- If there is no such agreement, unmarried cohabitants’ assets are divided through a partition suit.
- Framework for assessing cohabitation between two people exists in the context of modifying spousal support.

Stakeholder Input & Closing Thoughts

- The Virginia Family Law Coalition of the Virginia State Bar Association did not express an official position, but individual members from the Coalition expressed disapproval of implementing any part of the act.
- The Virginia Poverty Law Center has not yet submitted comments.
- Whether the act is fit for introduction in Virginia is ultimately a policy decision for legislators. Given Virginia's complete lack of laws on the subject of economic rights of unmarried cohabitants, implementing the act would be a major policy change.

Questions & Comments?

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