NOTICE OF MEETING
STATUTORY REVISIONS COMMITTEE

TO: Trust and Estate Section — Statutory Revisions Committee
FROM: Jonathan Haskell, Hayley Lambourn

The Next Meeting will be October 5, 2022 - 1:30 – 3:15 p.m. in Person and via Zoom

AGENDA – September 7, 2022

I. Welcome & Call to Order

A. Attendance & Introductions

B. Reminders

1. Please let Hayley Lambourn know if you did not receive meeting materials or if you would like to be removed from the email list. (hlambourn@wadeash.com)

C. Approval of Minutes: August 3, 2022 Meeting

II. Chairperson's Report

III. Legislative Liaison Report

IV. Announcements

V. Subcommittee Reports

A. *ACTIVE MATTERS PENDING APPROVAL*

1. Uniform Cohabitants Economic Remedies Act **(**Chair: Connie Eyster)
   a. Report, Presentation of Materials, and Potential Vote.
2. Electronic Estate Planning Documents Act
   a. Call for subcommittee members to review. Chair?
3. Amendment to C.R.S. § 15-12-203(4) (Personal Representative Priority Statute) (Chair: Gordon Williams)
4. Beneficiary Deeds Statute Update (Chair: Carl Stevens)
5. Uniform Community Property Disposition at Death Act **(**Chair: Connie Eyster)
6. Colorado Uniform Electronic Wills Act. Conforming amendments to C.R.S. §§ 15-12-406 and 15-12-303(3). (Letty Maxfield)
7. Review of C.R.S. § § 15-5-103 (10) and (16) [Definition of "interested person" and "qualified beneficiary"] (Spencer Crona)

B. *INACTIVE MATTERS*

1. Approved

a. Disclosure of Fiduciary Fees, C.R.S. §§ 15-10-602 and 15-12-705

(1) Approved in 2015-2016. The committee is coordinating with the Probate Trial and Procedure committee to determine whether the JDF form for information of appointment should be updated. Goal is to resolve by year-end 2022.

2. Approved but not moving forward

a. Colorado Electronic Preservation of Abandoned Estate Planning Documents Act. (Chair: Pete Bullard)

(1) The language approved by the committee was much broader (7 categories of estate planning documents) than the State Court Administrator was able to achieve (one category-Wills). The State Court Administrator created a pilot program which will be implemented on January 1, 2023 (when funding comes in) and the pilot program will address only Wills.

(2) This matter will remain inactive pending the pilot program. When the pilot program is complete, the committee will consider whether to attempt to reincorporate the broad language and whether the 6 other categories of estate planning documents should be added to the Act by amendment.

3. Unapproved

a. Child Support in Probate (Chair: Pat Mellen)

VI. Section Reports

A. Elder Law

B. Other

VII. New Matters

VIII. Approved Proposals for Inclusion in Omnibus bill or standalone legislation

1. Lodged Wills Statutes C.R.S. §§ 15-12-304 15-12-402 and 15-10-305.5

D R A F T

FOR ~~DISCUSSION ONLY~~APPROVAL

Uniform Electronic Estate Planning Documents Act

Uniform Law Commission

~~May 24~~MEETING IN ITS ONE-HUNDRED-AND-THIRTY-FIRST YEAR
PHILADELPHIA, PENNSYLVANIA
JULY 8 – 14, 2022 ~~Informal Session~~

This draft, including the proposed statutory language and any comments or reporter's notes, has not been reviewed or approved by the Uniform Law Commission or the drafting committee. It does not necessarily reflect the views of the Uniform Law Commission, its commissioners, the drafting committee, or the committee's members or reporter.

~~May 17~~June 16, 2022

Uniform Electronic Estate Planning Documents Act

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

Suzanne B. Walsh	Connecticut, *Chair*
Mary Ackerly	Connecticut
Turney P. Berry	Kentucky
James W. Dodge	Illinois
David M. English	Missouri
Marc S. Feinstein	South Dakota
Jacqueline T. Lenmark	Montana
Donald E. Mielke	Colorado
Bradley Myers	North Dakota
David G. Nixon	Arkansas
Robert H. Sitkoff	Massachusetts
Susan D. Snyder	Illinois
Dan Robbins	California, *President*
Nora Winkelman	Pennsylvania, *Division Chair*

Other Participants

Gerry W. Beyer	Texas, *Reporter*
Benjamin K. Sanchez	Texas, *American Bar Association Advisor*
John T. Rogers	California, *American Bar Association Section Advisor*
Nathaniel Sterling	California, *Style Liaison*
Tim Schnabel	Illinois, *Executive Director*

Copies of this act may be obtained from:

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(312) 450-6600
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Uniform Electronic Estate Planning Documents Act

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Electronic Estate Planning Documents Act

Prefatory Note

Times are changing. Reliance on traditional paper documents is waning. Many areas of the law have already embraced the transition from written to electronic documents which are electronically signed. For example, virtually all states have enacted the Uniform Electronic Transactions Act (UETA) and the electronic filing of pleadings and appellate briefs is widely accepted.

Left out of this transition were non-transactional documents relating to estate planning which hung on to the requirement of paper documents with actual pen-to-paper (wet) signatures. Recently, however, this trend has reversed with at least ten states embracing electronic wills either through the adoption of the Uniform Electronic Wills Act or through their own unique statutes. Regrettably, other estate planning documents have been left behind in this transition. Why is this?

A primary reason is the failure of state laws to expressly authorize these documents to be in electronic form and electronically signed. For example, UETA provides that when both parties to a transaction agree, a record or signature cannot be "denied legal effect or enforceability solely because it is in electronic form." UETA § 7(a). However, UETA does not expressly authorize the electronic signing of estate planning documents. UETA § 3(a) limits UETA's application to "transaction[s]," defined in UETA § 2(16) as "actions occurring *between two or more persons* relating to the conduct of business, commercial, or governmental affairs." (emphasis added). Accordingly, unilateral documents such as trusts and powers of attorney are not directly within UETA's scope. This conclusion is bolstered by Comment 1 to UETA § 3 which states:

> The scope of this Act is inherently limited by the fact that it only applies to transactions related to business, commercial (including consumer) and governmental matters. Consequently, transactions with no relation to business, commercial or governmental transactions would not be subject to this Act. Unilaterally generated electronic records and signatures which are not part of a transaction also are not covered by this Act.

UETA does not "prohibit" the electronic signing of estate planning documents. However, its failure to include them within its scope leaves such electronically signed documents vulnerable to attack. As a result, the underlying state laws governing estate planning documents must be amended. Absent such amendment, parties to unilateral estate planning documents could not be certain that electronically signed originals would be valid.

The Uniform Electronic Wills Act (2019) (UEWA) solves this problem with respect to testamentary documents such as wills, codicils, and testamentary trusts. The Uniform Electronic Estate Planning Documents Act (~~EEPDA~~UEEPDA), solves this problem for all other estate planning documents such as powers of attorney and trusts. For states that have yet to adopt the UEWA or their own electronic will statute, Article 3 of the ~~EEPDA~~UEEPDA provides the state with the opportunity to adopt the UEWA.

~~EEPDA~~UEEPDA is designed to authorize estate planning documents to be in electronic form and electronically signed. There is no intent to change the requirements for the validity of these documents imposed by state law in any other manner. ~~EEPDA~~UEEPDA is modeled after UETA so that it will cleanly interface with existing laws.

Uniform Electronic Estate Planning Documents Act

[Article] 1

General Provisions and Definitions

Section 101. Title

This [act] may be cited as the Uniform Electronic Estate Planning Documents Act.

Section 102. Definitions

In this [act]:

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(3) "Electronic signature" means an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(4) "Information" includes data, text, images, sounds, codes, computer programs, software, and databases.

(5) "Non-testamentary estate planning document" means a record relating to estate planning that is readable as text at the time of signing and that is not a will or codicil, or contained in a will or codicil. The term:

(A) includes a record readable as text at the time of signing that creates, exercises, modifies, releases, or revokes:

(i) a trust instrument ~~that is not created by the settlor's will or codicil~~;

(ii) a trust power that under the terms of the trust requires a signed record;

(iii) a certification of a trust under [cite to Uniform Trust Code Section 1013];

(iv) a power of attorney that is durable under [cite to Uniform Power of Attorney Act];

(v) an agent's certification of the validity of a power of attorney and the agent's authority under [cite to Uniform Power of Attorney Act Section 302];

(vi) a power of appointment;

(vii) an advance directive, including a [health-care~~]~~ power of attorney~~;~~], directive to physicians, natural death statement, living will, and medical or physician order for life-sustaining treatment;

(viii) a record directing disposition of an individual's body after death;

(ix) a nomination of a guardian for the signing individual;

(x) a nomination of a guardian for a minor or adult disabled child~~ that is not included in a will or codicil~~;

(xi) a mental health treatment declaration;

(xii) a community property survivorship agreement;

(xiii) a disclaimer under [cite to Uniform Disclaimer of Property Interests Act Section 2(3)]; and

(xiv) any other record intended to carry out an individual's intent regarding property or health care while incapacitated or on death; and

(B) does not include a ~~will, codicil, testamentary trust,~~ deed of real property~~, document~~ [or][,] certificate of title for a motor vehicle, watercraft, or aircraft~~, [~~ [, or other documents the state ~~desires to exclude~~excludes from ~~the coverage of~~ Article 2].

(6) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(7) "Power of attorney" means a record that grants authority to an agent to act in place of the principal, even if the term is not used in the record.

(8) "Record" means information:

(A) inscribed on a tangible medium; or

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

(9) "Security procedure" means a procedure to verify that an electronic signature, record, or performance is that of a specific person or to detect a change or error in an electronic record. The term includes a procedure that uses an algorithm, code, identifying word or number, encryption, or callback or other acknowledgment procedure.

(10) "Settlor" means a person, including a testator, that creates or contributes property to a trust.

(11) "Sign" means, with present intent to authenticate or adopt a record:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic signature.

(12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or other territory or possession subject to the jurisdiction

of the United States. The term includes a federally recognized Indian tribe.

(13) "Terms of a trust" means:

(A) except as provided in subparagraph (B), the manifestation of the settlor's intent regarding a trust's provisions as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding; or

(B) the trust's provisions as established, determined, or amended by:

(i) a trustee or other person in accordance with applicable law; [or]

(ii) a court order[; or

(iii) a nonjudicial settlement agreement under [cite to Uniform Trust Code Section 111].

(14) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments.

(15) "Will" includes a codicil and a testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

Legislative Note: *In paragraph (5), the definition of "non-testamentary estate planning document" may be expanded or contracted to conform with state substantive, administrative, or regulatory law or practices. A signature on a non-testamentary estate planning document and on a document excluded from the definition may still be effective under other state law. This act is designed to validate a signature that is in electronic form when other state law has not addressed the issue.*

In paragraph (5)(A)(vii), a state that uses the term "medical power of attorney"", "health-care proxy", or other term should revise the bracketed text accordingly.

Comment

~~Paragraph 3.~~ The definition of "electronic signature" is designed to exclude authentication via verbal or video methods.

~~Paragraph 5(B)(vii). States that refer to a "health care" power of attorney as a "medical" power of attorney should amend this definition according and use the appropriate term of art here and throughout this Act.~~

~~Paragraph 11.~~ Paragraph 5 requires the non-testamentary estate planning document to be readable as text such as an Adobe pdf file or a Word docx file; audio and audio-video records are not included. However, other state law that authorizes audio and audio-video non-testamentary estate planning documents is not impacted by this act and thus non-textual records authorized by other state law are still effective if they comply with the applicable state law.

The definition of "sign" is designed to exclude authentication via verbal or video methods.

Section 103. Construction

This [act] must be construed and applied to:

(1) facilitate electronic estate planning documents and signatures consistent with other law; and

(2) be consistent with reasonable practices concerning electronic documents and signatures and the continued expansion of those practices.

Comment

This section is based on the Uniform Electronic Transactions Act Section 6.

[Article] 2

Non-Testamentary Estate Planning Document Electronic Execution

Section 201. Scope

(a) Except as provided in subsection (b), this [article] applies to an electronic non-testamentary estate planning document and an electronic signature on a non-testamentary estate planning document.

(b) This [article] does not apply to a non-testamentary estate planning document if~~:~~ the document precludes the use of an electronic record or electronic signature.

~~(1)~~(c) This [article] does not affect the ~~document expressly precludes use~~validity of an electronic record or electronic

~~(2) the document~~signature that is ~~governed by~~valid under:

(1) [cite to Uniform Electronic Transactions Act]; [or]

(~~3~~2) [[Article 3]] [cite to other state law governing creation and execution of an electronic will, codicil, or testamentary trust[; or

(~~4~~3) [cite to other state law relating to non-testamentary estate planning documents the state ~~intends to exempt~~ excludes from this article]].

Comment

This section makes certain that the scope of this act is restricted to validating electronic signatures and is not intended to impact the validity of electronic signatures already authorized under other state law. If an electronic non-testamentary estate planning document, or a signature on such a document, is granted legal recognition by UETA, this act does not limit the legal recognition of the document or signature, but if the document or signature is not granted legal recognition by UETA, it will be granted legal recognition by this act.

Section 202. Principles of Law and Equity

The law of this state and principles of equity applicable to a non-testamentary estate planning document ~~and principles of equity~~ apply to an electronic non-testamentary estate planning document~~,~~ except as modified by this [article].

Comment

This section ~~is didactic and~~ makes it clear that the act supplants, but does not negate, other state law requirements that must be satisfied to validate a non-testamentary estate planning document.

Section 203. Use of Electronic Signature on Electronic Non-Testamentary Estate Planning Document

(a) This [article] does not require a non-testamentary estate planning document or signature on a non-testamentary estate planning document to be created, generated, sent,

communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) A person is not required to have a non-testamentary estate planning document in electronic form or signed electronically even if the person previously created or signed an estate planning document by electronic means. A person may not waive the right granted by this subsection.

Comment

This section is based on the Uniform Electronic Transactions Act Section 5.

In ~~Section 203~~ subsection (b), the term "person" rather than "individual" is used because a trustee may be a corporation or other legal entity. According, "person" is appropriate as it encompasses these entities.

Section 204. Recognition of Electronic Non-Testamentary Estate Planning Document and Electronic Signature

(a) A non-testamentary estate planning document or a signature on a non-testamentary estate planning document may not be denied legal effect or enforceability solely because it is in electronic form.

(b) If other law of this state requires a non-testamentary estate planning document to be in writing, an electronic record of the document satisfies the requirement.

(c) If other law of this state requires a signature on a non-testamentary estate planning document, an electronic signature satisfies the requirement.

Comment

This section is based on the Uniform Electronic Transactions Act Section 7.

Section 205. Attribution and Effect of Electronic Record and Electronic Signature

(a) An electronic non-testamentary estate planning document or electronic signature on

the document is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of a security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of attribution of a document or signature to a person under subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption and as provided by other law.

Comment

This section is based on the Uniform Electronic Transactions Act Section 9.

Section 206. Notarization and Acknowledgment

If other law of this state requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature on an electronic non-testamentary estate planning document of the individual authorized to perform the acts, together with all other information required to be included under other law, is attached to or logically associated with the signature or record.

Comment

This act does not address whether the notarization of electronic estate planning documents must be done in the physical presence of the signer or whether an electronic (remote) presence is sufficient. These are matters for state substantive law to address such as by the enactment of the Revised Uniform Law on Notarial Acts.

Section 207. Witnessing and Attestation

[(a)] If other law of this state bases the validity of a non-testamentary estate planning document on whether it is signed, witnessed, or attested by another individual, the signature, witnessing, or attestation of that individual may be electronic.

[(b) In this subsection, "electronic presence" means that two or more individuals in different locations are able to communicate in real time to the same extent as if the individuals

were physically present in the same location. If other law of this state bases the validity of a non-testamentary estate planning document on whether it is signed, witnessed, or attested by another individual in the presence of the individual signing the document, the presence requirement is satisfied if the individuals are in each other's electronic presence.]

Legislative Note: *Optional subsection (b) provides the state the opportunity to authorize electronic presence, or remote, witnessing. If a state has enacted the Uniform Electronic Wills Act, the state should consider making the "presence" rules the same for a non-testamentary as for a testamentary document.*

Comment

This act does not take a position on whether the witnesses who are required by state law to be in the physical presence of the individual signing the document may satisfy the presence requirement by a virtual or electronic presence. Optional subsection (b) provides the state with the opportunity to authorize remote witnessing if the state believes doing so would be a prudent addition to its jurisprudence.

Section 208. Retention of Electronic Record; Original

(a) Except as provided in subsection (b), if other law of this state requires an electronic non-testamentary estate planning document to be retained, transmitted, copied, or filed, the requirement is satisfied by retaining, transmitting, copying, or filing an electronic record that:

(1) accurately reflects the information in the document after it was first generated in final form as an electronic record or under ~~section~~ Section 209 ~~of this act~~; and

(2) remains accessible to the extent required by the law.

(b) A requirement to retain a record under subsection (a) does not apply to information the sole purpose of which is to enable the record to be sent, communicated, or received.

(c) A person may satisfy subsection (a) by using the services of another person.

(d) If other law of this state requires a non-testamentary estate planning document to be presented or retained in its original form, or provides consequences if ~~the~~ a non-testamentary estate planning document is not presented or retained in its original form, an electronic record

retained in accordance with subsection (a) satisfies the law.

(e) This section does not preclude a governmental agency from specifying requirements for the retention of a record subject to the agency's jurisdiction in addition to those provided in this section.

Comment

This section is based on the Uniform Electronic Transactions Act Section 12.

Section 209. Certification of Paper Copy

An individual may create a certified paper copy of an electronic non-testamentary estate planning document by affirming under penalty of perjury that the paper copy ~~of the electronic non-testamentary estate planning document~~ is a complete and accurate copy of the ~~electronic non-testamentary estate planning~~ document.

~~**Comment**~~

Comment

This section is based on the Uniform Electronic Wills Act Section 9. Using this procedure to obtain a paper copy will not cure any defect that existed regarding the validity of the electronic non-testamentary estate planning document or electronic signature thereon.

Section 210. Admissibility in Evidence

Evidence ~~of a record or signature~~ relating to an electronic non-testamentary estate planning document or electronic signature on the document may not be excluded in ~~an action~~ a proceeding solely because it is in electronic form.

Comment

This section is based on the Uniform Electronic Transactions Act Section 13.

[[Article] 3

Uniform Electronic Wills Act]

Legislative Note: *A state that wishes to expand this act to include electronic creation and*

execution of a testamentary document, including a will, testamentary trust, or codicil, should insert the Uniform Electronic Wills Act or similar statute at this point in the act, making adjustments to this act or to the incorporated act as appropriate. If the Uniform Electronic Wills Act is the statute being included, the only definition in Section 2 of that act necessary is "electronic will." If remote witnessing is desired for an electronic will, the definition of "electronic presence" found in Section 207(b) of Article 2 of this act is also necessary in this article. Sections 10 (uniformity of application and construction), 11 (transitional provision), and 12 (effective date) should be deleted from the Uniform Electronic Wills Act.

[Article] 4

Miscellaneous Provisions

Section 401. Uniformity of Application and Construction

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

Section 402. Relation to Electronic Signatures in Global and National Commerce Act

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

Legislative Note: *It is the intent of this act to incorporate future amendments to the cited federal law. A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase ", as amended." A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.*

Section 403. Transitional Provision

[(a)] This [act] applies to an electronic non-testamentary estate planning document created, signed, generated, sent, communicated, received, or stored before, on, or after [the effective date of this [act~~].~~]].

[(b) This [act] applies to the will of a decedent who dies on or after [the effective date of

this [act]].]

Legislative Note: *A state that enacts this act with optional Article 3 (Uniform Electronic Wills Act) should adopt this section in its entirety, including all of the bracketed text. A state that enacts this act without Article 3 should adopt this section omitting both the bracketed text "[(a)]" and the entirety of bracketed subsection (b).*

[Section 404. Severability

If a provision of this [act] or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]

Legislative Note: *Include this section only if the state lacks a general severability statute or a decision by the highest court of the state adopting a general rule of severability.*

[Section 405. Repeals; Conforming Amendments

(a). . .

(b). . .]

Legislative Note: *A state should examine its statutes to determine whether conforming revisions are required by provisions of this act relating to the execution of testamentary and non-testamentary estate planning documents.*

Section 406. Effective Date

This [act] takes effect . . .

MEMORANDUM

From: Suzanne Brown Walsh, Chair

Gerry W. Beyer, Reporter

To: Uniform Law Commission

Re: Electronic Estate Planning Documents Act

Date: June 16, 2022

This memo provides an introduction to and overview of the Uniform Electronic Estate Planning Documents Act, scheduled for its first and final reading at our 2022 Annual Meeting in Philadelphia.

Background. The Act compliments the Uniform Electronic Wills Act, but is more limited in scope. This committee was originally tasked with amending the Uniform Electronic Wills Act, Uniform Trust Code, and Uniform Power of Attorney Act to address the remote execution of paper documents (known as "Remote Ink Execution or Signing,") and the use of electronic estate planning documents other than wills. (These are referred to as "non-testamentary estate planning documents" and defined in the act.) It was also asked to consider the use of a stand-alone act.

Although virtually all states have enacted the Uniform Electronic Transactions Act (UETA), UETA does not address the electronic signing of non-testamentary estate planning documents. UETA § 3(a) limits its application to "transaction[s]," defined as "actions occurring ***between two or more persons*** relating to the conduct of business, commercial, or governmental affairs." (emphasis added). Accordingly, unilateral documents such as trusts and powers of attorney (and many other documents signed in the furtherance of an estate plan, or the administration of a decedent's estate, guardianship, or trust) are not directly and clearly within UETA's scope.

This conclusion is bolstered by Comment 1 to UETA §3, which states:

> The scope of this Act is inherently limited by the fact that it only applies to transactions related to business, commercial (including

> consumer) and governmental matters. Consequently, transactions with no relation to business, commercial or governmental transactions would not be subject to this Act. Unilaterally generated electronic records and signatures which are not part of a transaction also are not covered by this Act.

UETA does not "prohibit" the electronic signing of non-testamentary estate planning documents. However, its failure to include them within its scope leaves such electronically signed non-testamentary estate planning documents vulnerable to attack. UEEPDA bridges that gap.

In determining how best to rectify UETA's stated inapplicability to non-commercial, unilateral documents, the UEEPDA drafting committee determined that drafting a standalone, "mini-UETA" would be the most feasible and practical solution. This allows states who predict, or who have encountered, enactment difficulties with the Uniform Electronic Wills Act ("UEWA") to bifurcate the acts and propose them separately, increasing the enactment odds for one or both. Second, limiting this act's scope to the execution of electronic non-testamentary estate planning documents greatly simplified the drafting committee's work. Finally, it is the solution adopted by Florida in its E-Wills legislation, and more recently, by Delaware in 12 Del.C. Sec. 3550, ("Electronic Execution of Documents").

The Committee considered whether or not to include a Remote Ink Execution option in the Act, and voted not to do so.

Key Policies. The major policy choices made by the committee were: 1) as in UEWA, to mandate that all documents be readable as text at the time of signing; 2) to define the non-testamentary electronic estate planning documents covered by the act fairly specifically, to avoid an overinclusive definition that might impede enactment; 3) to eliminate the requirement (similar to that in UETA Sec. 5) that the person signing the non-testamentary electronic estate planning document must agree that it be electronic or signed electronically (this change was suggested by the JEB for UTEA at its April 8th meeting); 4) to include a placeholder Article for UEWA, with a legislative note to guide states who wish to enact both Acts together.; and 5) to provide a bracketed option for

remote witnessing, a natural extension of the electronic signing of documents that often require witnesses.

Timing. From its inception, this project was time-sensitive, for three main reasons. One was the pandemic, which necessitated document executions by parties, notaries, and witnesses who, at a minimum, needed to be socially distant but often, had to be in separate locations, necessitating the use of video conferencing and other technology. The second was the demand for a law that expressly approves electronically signed estate planning documents that were not "covered" by UETA. The third was demand from state bar groups and others considering UEWA. Finally, lawyers, trustees, trust administrators, and financial institutions are either presently using, or wish to use, electronic document signing technology to facilitate the day-to-day documentation associated with their individual client practices and wealth management needs.

UNIFORM COHABITANTS' ECONOMIC REMEDIES ACT

1. SECTION 1	
2. SUBJECT	**SHORT TITLE**
3. UNIFORM TEXT	This [act] may be cited as the Uniform Cohabitants' Economic Remedies Act.
4. PROPOSED STATUTORY TEXT **SECTION 14-16-101**	THE SHORT TITLE OF THIS ARTICLE 16 IS THE "COLORADO UNIFORM COHABITANTS' ECONOMIC REMEDIES ACT".
5. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	**None.**
6. COLORADO LAW.	N/A
7. COLORADO COMMITTEE COMMENTS	
8. RECOMMENDATION	Adopt.

UNIFORM COHABITANTS' ECONOMIC REMEDIES ACT

1. SECTION 2	
2. SUBJECT	**DEFINITIONS**
3. PROPOSED TEXT 14-16-102	As used in this Article 16, unless the context otherwise requires: (1) "Cohabitant" means each of two individuals who are not married to each other, and who are not parties to a civil union with 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. (2) "Cohabitants' agreement" means an agreement between two individuals concerning contributions to the relationship if the individuals are to become, are, or were cohabitants. The term includes a waiver of rights under this Article 16. (3)(a) "Contributions to the relationship" means contributions of a cohabitant that benefit the other cohabitant, both cohabitants, or the cohabitants' relationship, in the form of efforts, activities, services, or property. (b) "Contributions to the relationship includes: (I) Cooking, cleaning, shopping, household maintenance, and performing errands, and other domestic services for the benefit of the other cohabitant or the cohabitants' relationship; and (II) Otherwise caring for the other cohabitant, a child in common, or another family member of the other cohabitant; and (c) "Contributions to the relationship" does not include sexual relations. (4) "Live together as a couple" refers to the act of: (a) having a relationship of an affectionate or intimate nature with another person with the intent to remain in the relationship; and (b) living or dwelling together, although such living or dwelling together need not be exclusive or continuous. (5) "Property" means anything that may be the subject of ownership, whether real or personal, tangible or intangible, legal or equitable, or any interest therein. The term includes responsibility for a debt.

	(6) "Record" means information: (a) inscribed on a tangible medium; or (b) stored in an electronic or other medium and retrievable in perceivable form. (7) "State" means the District of Columbia, Puerto Rico, the United States Virgin Islands, a state of the United States, or any other territory or possession subject to the jurisdiction of the United States. (8) "Termination of cohabitation" means the earliest of: (a) The death of a cohabitant; (b) The date the cohabitants stop living together as a couple; or (c) The date of the cohabitants' marriage to each other.
4. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	See attached.
5. COLORADO LAW.	**Cohabitation** In analysis of cohabitation in a common law marriage context, cohabitation has been defined to mean "holding forth to the world by the manner of daily life, by conduct, demeanor, and habits, that the man and woman have agreed to take each other in marriage and to stand in the mutual relation of husband and wife." *In re Estate of Little*, 433 P.3d 172 (Colo App 2018), quoting *Smith v. People*, 170 P. 959, at 960. See also *Klipfel v.Klipofel*, 92 P. 26 (1907). *Smith v. People*, 170 P. 959 (Colo 1918) 'Cohabitation,' as here, used means something more than sexual intercourse. Bouvier defines 'cohabit' to be 'to live together in the same house, claiming to be married.' Webster defines 'cohabitation' as 'the act or state of dwelling together, or in the same place with another.' * * * 'To cohabit is to live or dwell together, to have the same habitation; * * * **Contributions to the relationship** CRS 14-10-113(1)(a) requires a court, when dividing marital property in a dissolution proceeding, to consider "The contribution of each spouse to the acquisition of the marital property, including the contribution of a spouse as homemaker." In *LaFleur v. Pyfer*, a case finding that a common law marriage could exist in Colorado prior to the US Supreme Court decision legalizing same sex marriages, the court suggested that on remand, the trial court should consider each party's financial, emotional, and other *contributions to the relationship* when dividing the marital property. The court noted that "it is not clear why the [trial] court expected one spouse to pay rent to the other to live in the couple's

	marital home. Moreover, the fact that Pyfer did not hold a steady job does not mean he did not contribute to the marital relationship in a meaningful way, nor should the fact that he did not work be held against Pyfer in equitably distributing the marital assets and debts or awarding spousal maintenance." 479 P.3d 869 (Colo. 2021) Intimate Relationship C.R.S. 18-6-800.3 "Intimate relationship" means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time. **Property** **15-10-201(42)** "Property" means both real and personal property or any interest therein and anything that may be the subject of ownership. **15-5-103(15)** "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein **Record** **15-10-201(44.5)** "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. **State** 15-5-103(20) "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. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.
6. COLORADO COMMITTEE COMMENTS	Colorado appears to view cohabitants as people who reside with each other and is a factor in common law marriage analysis. Exclusion of persons who have a relationship that would not permit a marriage from the definition of cohabitants does not appear to create a gap in remedies for family members who desire to contract with each other in connection with a cohabitation arrangement – as there is no prohibition under the common law from them doing so as there may be for persons in a romantic relationship. The factors listed for contributions to a relationship appear to be factors similar to those used in dissolution matters to address contributions to the creation of marital property. The comments provide that contributions to a relationship could also include: "activities related to business development, business entertaining, and similar activities for the benefit of the other partner or the relationship generally."

	Query whether "contributions to the relationship" in this Article requires the same link to the creation of property as currently exists in the family law code. Note the addition of Indian Tribes to the definition of "state" under the Trust Code. A definition for "live together as a couple" was deemed necessary because it forms the basis of the definition of a "cohabitant." This statute is not intended to refer to mere roommates, but to persons who have a relationship of a romantic (although not necessarily sexual) nature, as those are the types of persons who might otherwise be prohibited from contracting with each other. We also felt it was important to clarify that persons who have a sporadic or temporary relationship will not be considered to "live together as a couple" - but rather the statute is intended to apply to people who have formed a committed, if not exclusive, relationship. Finally, we felt it important to codify the notion set forth in the comments that living together did not require that the cohabitants continuously share a common residence.
7. RECOMMENDATION	Adopt as amended.

COMMENTS

UCERA applies to "cohabitants." Cohabitants cannot be in a common law or other lawful marriage to each other. However, either or both cohabitants may be married to someone else. A cohabitant may be an emancipated minor, but generally a cohabitant must be an adult. Cohabitants may not be so closely related that they would be prevented from marrying in the state in which they reside. The definition limits application of UCERA to cohabiting couples rather than to relationships of more than two people.

The meaning of "living together as a couple" is a factual question that will be determined based on the unique circumstances of the cohabitants' relationship. Living together does not require a common residence. Some couples will be apart because of work assignments or incarceration, for example, or may decide for financial or other reasons to maintain separate residences even though other facts demonstrate that they live together as a couple. Cynthia Grant Bowman, How Should the Law Treat Couples Who Live Apart Together?, 29 Child & Fam. L.Q. 335, 335-36 (2018). Living together as a couple does not require proof that the relationship has a sexual element.

Because the definition applies only to minors who have been emancipated, if a minor begins living with a nonmarital partner, UCERA will cover the rights and interests of the minor only after the age of majority is reached. The minor may nonetheless have rights outside of UCERA.

States that grant parties in civil unions or domestic partnerships rights comparable to those of a married couple should ensure that the term "cohabitants" does not include individuals who are in a civil union or domestic partnership with one another. Their rights and obligations are defined by other state law, not UCERA. See, e.g., Nev. Rev. Stat. §122A.200(a)("Domestic partners have the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon spouses.").

Example 1: A, B, and C live together. Even if A and B are a couple, and B and C are a couple, and A and C are a couple, UCERA does not consider A, B, and C collectively as cohabitants. Thus, A may enter into a contract with, or make an equitable claim against, C, but A, B, and C cannot enter into an agreement under this act. Of course, each may have claims under other state law.

Example 2: A and B are cohabitants living in State X. A moves to State Y for six months for work but plans to return to State X to live with B after the work ends. Although A and B may not have been living together as a couple if they had been living in different states when their relationship began, once they began living together as a couple, and were thus cohabitants, a period of separation does not change the fact that they are cohabitants.

The definition of "contributions to the relationship" in subsection (3) is central to UCERA. In addition to property and domestic services, the term may also include activities related to business development, business entertaining, and similar activities for the benefit of the other partner or the relationship generally. E.g., Hills v. Superior Court (Munoz), No. B174068, 2004 WL 1657689, at *6 (Cal. Ct. App. July 26, 2004) (reasoning that female plaintiff's assertions, including that "she gave up her career and devoted herself to performing household and other domestic services for him so as to aid his business career," gave rise to triable issues). Contributions to the relationship can provide the basis for both contractual and equitable claims under UCERA.

While not required by UCERA, cohabitation may involve a sexual relationship. Under UCERA, the existence of a sexual relationship does not preclude a claim. However, sexual conduct is not a contribution to the relationship, and therefore cannot constitute all or any portion of the consideration for a contract between cohabitants or the basis of a claim between them. Courts have often confused domestic services and sexual services, a distinction that UCERA draws sharply. For further discussion of the prior confusion, see Albertina Antognini, Nonmarital Contracts, 73 Stan. L. Rev. 67 (2021).

A "cohabitants' agreement" relates to the exchange of property and services, activities, and efforts that are a part of the relationship of living together as a couple. Cohabitants' agreements need not be in writing. As used within UCERA with respect to a cohabitants' agreement, the definition of "record" makes clear that the existence of an express agreement may be found in videos, emails, and any other type of information that can be retrieved in a tangible form. A record is not, however, required to establish such agreements. Section 6 provides that a cohabitants' agreement may also be oral or implied-in-fact.

The nature of cohabiting relationships is informal and to require a formal writing would invalidate many otherwise valid agreements. The definition of cohabitants' agreement recognizes that such agreements may include a waiver of any rights a cohabitant may have, under UCERA or otherwise. The standards for establishing an effective waiver are governed by other law of the state.

The definition of "property" includes responsibility for a debt to indicate that there may be joint undertakings that require liabilities to be divided, and that debts affect the value of property.

The phrase "termination of cohabitation" is used in Sections 6 and 7 to specify when a cause of action accrues under UCERA. "Marriage", as used in the definition, includes a legally recognized common law marriage. In those states which grant rights comparable to marriage to individuals in a civil union or domestic partnership, an enacting state should include references to the civil union or domestic partnership, as appropriate, wherever UCERA refers to "marriage" or "spouse."

UNIFORM COHABITANTS' ECONOMIC REMEDIES ACT

1. SECTION 3	
2. SUBJECT	**SCOPE**
3. PROPOSED TEXT	This Article 16 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 this Article 16 are not exclusive.
4. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	See attached.
5. COLORADO LAW.	
6. COLORADO COMMITTEE COMMENTS	None. No suggested changes.
7. RECOMMENDATION	Adopt.

COMMENTS

Together, Section 3 and Section 4 set out the express purpose of UCERA: to remove bars to claims so that cohabitants are treated as other litigants under applicable state law and are not precluded from bringing claims solely because their relationship is possibly sexual and certainly nonmarital. UCERA affirmatively recognizes a cohabitant's right to maintain relationship-based claims.

In Blumenthal v. Brewer, 69 N.E.3d 834, 854 (Ill. 2016), the Illinois Supreme Court rejected constructive trust and restitution claims by a long-term cohabitant, noting that although the parties may have contracted independently of their cohabiting relationship, recognition of claims based on their cohabiting relationship would be inconsistent with the legislature's abolition of common law marriage. In Gunderson v. Golden, 360 P.3d 353 (Idaho Ct. App. 2015). The court rejected a claim for division of property after a 25-year cohabitation stating "[t]he elimination of common-law marriage, supported by an explicit public policy justification, commands our courts to refrain from enforcing contracts in contravention of clearly declared public policy and from legally recognizing cohabitational relationships in general." See also, e.g., Antognini, supra.

Enforcement of a contractual or equitable claim under this act may take a variety of forms.

Example 1: A and B are cohabitants. After termination of the relationship, A still has property in the household. A court might enjoin A from access to the residence while adjudicating the property claims.

Example 2: One cohabitant has photos or videos taken during the relationship that the other cohabitant might seek to have preserved or deleted.

This section makes clear that a cohabitant may have cognizable rights vis-a-vis the other cohabitant by virtue of other state law that are not lost unless clearly inconsistent with this act. The rights and remedies provided by UCERA are not the exclusive rights and remedies afforded to cohabitants. For example, if cohabitants are partners in a professional practice, the governing instrument will provide rights and remedies to the cohabitants that are consistent with this act. Tort claims between cohabitants are not affected by UCERA.

UCERA has no effect on marriage or state law governing marriage. Marriage is a formal legal status that provides spouses with rights and remedies unavailable to cohabitants under UCERA.

UNIFORM COHABITANTS' ECONOMIC REMEDIES ACT

1. SECTION 4	
2. SUBJECT	**Right of Cohabitant to Bring Action**
3. UNIFORM TEXT	(a) 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 the cohabitants; (2) subject to additional substantive or procedural requirements because the parties to the action are or were cohabitants or because of a sexual relationship between the cohabitants; or (3) extinguished by the marriage of the cohabitants to each other. (b) The action may be commenced on behalf of a deceased cohabitant's estate. (c) The action may be commenced against a deceased cohabitant's estate and adjudicated under law of this state applicable to a claim against a decedent's estate.
4. PROPOSED STATUTORY TEXT **SECTION 14-16-104**	(1) 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: (a) BARRED BECAUSE OF A SEXUAL RELATIONSHIP BETWEEN THE COHABITANTS; (b) SUBJECT TO ADDITIONAL SUBSTANTIVE OR PROCEDURAL REQUIREMENTS BECAUSE THE PARTIES TO THE ACTION ARE OR WERE COHABITANTS OR BECAUSE OF A SEXUAL RELATIONSHIP BETWEEN THE COHABITANTS; OR (c) EXTINGUISHED BY THE MARRIAGE OF THE COHABITANTS TO EACH OTHER. (2) THE ACTION MAY BE COMMENCED ON BEHALF OF A DECEASED COHABITANT'S ESTATE. (3) THE ACTION MAY BE COMMENCED AGAINST A DECEASED COHABITANT'S ESTATE AND ADJUDICATED UNDER LAW OF THIS STATE APPLICABLE TO A CLAIM AGAINST A DECEDENT'S ESTATE.
5. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	Section 4(a) reiterates and expands on Section 3: the purpose of UCERA is to allow cohabitants to assert claims against one another in the same manner as other litigants without imposition of additional bars or requirements. Section 4(a)(3) makes clear that even if the cohabitants subsequently

	marry, any claims arising from the cohabitation are not lost. Their marriage terminates the cohabitation but not the viability of the claim. Cohabitants who intend to marry may, and probably should, clarify their rights in a premarital agreement, including consideration of any rights enforceable under UCERA. See the Uniform Premarital and Marital Agreements Act (2012). Subsequent sections of UCERA make clear that claims between cohabitants are subject to other state law (see Section 5), with a few minor exceptions. A cohabitant's claim will be subject to the same statutes of limitation and burdens of proof as apply to other contractual or equitable claims between individuals under the law of the enacting state. Under Section 6 (c), a claim for breach of a cohabitants' agreement accrues on breach. An equitable claim predicated on contributions to the relationship accrues on termination of cohabitation under Section 7(b). The accrual rules of UCERA may not conform to the enacting state's law for similar claims but reflect appropriate standards for claims between cohabitants. UCERA does not specify the appropriate court for actions between cohabitants. A state may require that such actions be brought in a court of general jurisdiction. However, if a cohabitants' claim is brought upon divorce, then a state might want to authorize the court handling the divorce to adjudicate a cohabitant's claims. Moreover, UCERA leaves to other state law the question of whether a jury trial is available. Subsections (b) and (c) confirm that claims may be brought against, or on behalf of, the estate of a deceased cohabitant. The enacting state's procedures governing claims by or against a decedent's estate will similarly govern any such claim involving cohabitants, although Section 8 provides alternatives for states wanting to add some protection for the spouse of a cohabitant.
6. COLORADO LAW.	Salzman v. Bachrach, 996 P.2d 1263, 1268-69 (Colo. 2000). "We find these authorities persuasive and agree that cohabitation and sexual relations alone do not suspend contract and equity principles. We do caution, however, that mere cohabitation does not trigger any marital rights. A court should not decline to provide relief to parties in dispute merely because their dispute arose in relationship to cohabitation. Rather, the court should determine, as with any other parties, whether general contract laws and equitable rules apply. In this case, the evidence supports Bachrach's claim that sexual relations with Salzman were not the sole motivation for his contributions toward the construction of the home. He

sold his condominium and placed all of the proceeds and other funds directly into the home in which he expected to live for the balance of his life. Both Salzman and Bachrach took title to the land on which the home was built, and according to undisputed testimony, Bachrach quitclaimed his entire interest in the home largely for the benefit of Salzman.

In consideration for Bachrach's contributions he obtained a much larger, more luxurious home in which to live and work, a cohabitant for whom he cared, and reduced living expenses. As we see it, sexual relations with Salzman constituted only a portion of the benefits received by Bachrach, and definitely were not the sole consideration. While the home purchase related to their intimate relationship because they both lived in the home, Bachrach's cause of action does not depend on their sexual relations. Thus, their cohabitation does not bar this suit in equity."

In re Marriage of Dwyer, 825 P.2d 1018, 1019-20 (Colo. App. 1991)

"Section 14-10-122(2) provides:

"Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the *remarriage* of the party receiving maintenance." (emphasis added)

Initially, we note that husband does not suggest that wife's new relationship constitutes a valid common law marriage which would concededly be a "remarriage" within the meaning of § 14-10-122(2). *See People v. Lucero,* 747 P.2d 660 (Colo. 1987). Rather, he argues that § 14-10-122(2) should apply to cohabitation as well as remarriage.

Although no Colorado case is directly on point, a majority of the jurisdictions that have addressed this issue have held that a former spouse's unmarried cohabitation is not, in and of itself, sufficient ground for suspending, reducing, or terminating maintenance. *See Alibrando v. Alibrando,* 375 A.2d 9 (D.C. 1977); *Sieber v. Sieber,* 258 N.W.2d 754 (Minn. 1977); *Garlinger v. Garlinger,* 137 N.J. Super. 56, 347 A.2d 799 (N.J. Super. 1975). *See generally* J. Oldham, *The Effect of Unmarried Cohabitation by a Former Spouse Upon His or Her Right to Continue to Receive Alimony,* 17 J. Fam. L. 249 (1978).

The rationale for adopting this approach is that unmarried cohabitants do not assume the reciprocal obligations of marriage, including the common law duty of support. *See Mitchell v. Mitchell,* 418 A.2d 1140 (Me. 1980); *Bisig v. Bisig,* 124 N.H. 372, 469 A.2d 1348 (N.H. 1983).

An additional rationale was used by the Kentucky supreme court which also rejected the same argument made by husband here. The Kentucky court reasoned that such an interpretation of its statute, which is identical to ours, would violate the plain meaning of the statutory term "remarriage." *Lydic v. Lydic,* 664 S.W.2d 941 (Ky. Ct. App. 1983).

We agree with both rationales and, therefore, hold as a matter of law that the existence of cohabitation in and of itself in not tantamount to "remarriage" for purposes of § 14-10-122(2).”

In re Marriage of Lafleur v. Pyfer, 2021 CO 3, ¶ 65 n.10, 479 P.3d 869, 886

“On remand, the court should consider each party's financial, emotional, and other contributions to the relationship. For example, at the permanent orders hearing, the court noted that Pyfer stayed home and did not work or pay rent to LaFleur. Yet in marital relationships, one spouse often financially supports the other. Having concluded that Pyfer and LaFleur had entered into a common law marriage, it is not clear why the court expected one spouse to pay rent to the other to live in the couple's marital home. Moreover, the fact that Pyfer did not hold a steady job does not mean he did not contribute to the marital relationship in a meaningful way, nor should the fact that he did not work be held against Pyfer in equitably distributing the marital assets and debts or awarding spousal maintenance.”

C.R.S. § 15-11-514

“A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after July 1, 1995, may be established only by (i) provisions of a will stating material provisions of the contract, (ii) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract, or (iii) a writing signed by the decedent evidencing the contract. The execution of a joint will or mutual wills does

	not create a presumption of a contract not to revoke the will or wills." C.R.S. § 15-12-803 C.R.S. § 13-80-101
7. COLORADO COMMITTEE COMMENTS	
8. RECOMMENDATION	Adopt.

UNIFORM COHABITANTS' ECONOMIC REMEDIES ACT

1. SECTION 5	
2. SUBJECT	**GOVERNING LAW**
3. PROPOSED TEXT	14-16-105 (1) Except as otherwise provided in this Article 16, a claim under this Article 16 is governed by other law of this state, including this state's choice-of-law rules. (2) The validity, enforceability, interpretation, and construction of a cohabitants' agreement are determined by: (a) the law of the state designated in the agreement if the designation is valid under other law of this state; or (b) in the absence of a designation effective under subsection (2)(a) of this section, the law of this state, including this state's choice-of-law rules.
4. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	See attached.
5. COLORADO LAW.	*Wood Brothers Homes, Inc. v. Walker Adjustment Bureau*, 601 P.2d 1369, 1372 (Colo. 1979). Restatement (Second) of Conflict of Laws, Section 187(2)(a).
6. COLORADO COMMITTEE COMMENTS	
7. RECOMMENDATION	Adopt.

UCERA Comments

UCERA changes state law to the extent the law prevents recognition of contractual or equitable claims based on the value of contributions to the relationship, including domestic services, to the cohabitants but does not change procedural law governing statutes of limitation, choice of law, transfers of property, probate proceedings and similar matters. UCERA is designed to fit into an enacting state's legal structure for enforcement of contractual or equitable claims.

Subsection (b) provides that, as with most other agreements, a cohabitants' agreement may specify a governing law, provided the specified law has a relationship to either the parties or their agreement, and it is not contrary to the enforcing state's public policy.

As cohabitants move between states, UCERA contemplates that the rights of those cohabitants to bring claims against one another will be preserved if consistent with conflict of law principles.

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

Example 2: A and B are cohabitants and live in State Y, which has not enacted UCERA. They vacation in State X, which has enacted UCERA. Rights do not arise under UCERA from the vacation in State X.

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

Example 4: A and B are cohabitants and live in State Y for three years. State Y has not enacted UCERA. Their relationship terminates. B remains in State Y, and A then moves to State X, which has enacted UCERA. A may have a common law claim, subject to the jurisdiction of State X, but does not have a claim under UCERA in State X.

Analysis

The parties may select the choice of law governing the validity, enforceability, interpretation, and construction of a cohabitants agreement. As to the expression: "if the designation is valid under other laws of this state," Colorado follows the Restatement with respect to choice of law provisions in a contract. *Wood Brothers Homes, Inc. v. Walker Adjustment Bureau*, 601 P.2d 1369, 1372 (Colo. 1979). Under the Restatement, Colorado courts are not required to honor the parties' choice of law selection if "the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice…." Restatement (Second) of Conflict of Laws, Section 187(2)(a).

This provision is different than the UPMA. C.R.S. 14-2-304 states:

> The validity, enforceability, interpretation, and construction of a premarital agreement or marital agreement are determined
>
> > (a) By the law of the jurisdiction designated in the agreement if the jurisdiction has a significant relationship to the agreement or either party at the time the agreement was signed [underlining added] and the designated law is not contrary to section 14-2-309 or to a fundamental public policy of this state; or
> >
> > (b) Absent an effective designation described in paragraph (a) of this subsection (1), by the law of this state, including the choice-of-law rules of this state.

Under the UPMA, Colorado added the phrase "at the time the agreement was signed" to the UPMA's model language.

UNIFORM COHABITANTS' ECONOMIC REMEDIES ACT

1. SECTION 6	
2. SUBJECT	**COHABITANTS' AGREEMENT**
3. PROPOSED TEXT 14-16-106	(a) A cohabitants' agreement may be oral, in a record, express, or implied-in-fact. (b) Contributions to the relationship are sufficient consideration for a cohabitants' agreement. (c) A claim for breach of a cohabitants' agreement accrues on breach and may be commenced, subject to §13-80-101, during cohabitation or after termination of cohabitation. (d) A term in a cohabitants' agreement that affects adversely a child's right to support is unenforceable. (e) A term in a cohabitants' agreement that requires or limits the ability of a cohabitant to pursue a civil, criminal, or administrative remedy is voidable to the extent the remedy is available because the cohabitant is a victim of a crime of violence as described in Section 18-1.3-406. (f) A term in a cohabitant agreement that violates public policy is unenforceable. *Legislative Note: Subsection (e) should refer to a state's statutory or judicial definition of "crime of violence" or, in absence of a definition, cite to appropriate crimes.*
4. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	See attached.
5. COLORADO LAW.	Colorado law currently allows cohabitants to enter into contracts with each other, and a court has found that cohabitation and sexual relations do not suspend contract and equity principles. *Salzman v. Bachrach,* 996 P.2d 1263 (Colo. 2000). Colorado law recognizes that contracts may be oral, in a record, express or implied-in-fact. Thre is no difference in legal effect between express and implied-in-fact contracts. *Tuttle v. ANR Freight System, Inc*., 797 P.2d 825 (Colo. App. 1990) "An express contract is one evidenced by the parties' words, while a contract implied in fact arises from the parties' conduct. In either case, however the words or conduct must evidence a mutual intention by the parties to contract with each other." *DCB Cons. Col, In, v. Central City Development Co*., 940 P.2d 958 (Colo App. 1996). "To recover on a breach of **contract** claim, a plaintiff must prove the following elements: (1) the existence of a **contract**, (2)

	performance by the plaintiff or some justification for nonperformance, (3) failure to perform the **contract** by the defendant, and (4) resulting damages to the plaintiff." W. *Distrib. Co. v. Diodosio*, 841 P.2d 10053 (Colo. 1992). Colorado statute of frauds, **C.R.S. 38-10-112**, governs the enforceability of an oral express contract: **(1)** Except for contracts for the sale of goods which are governed by section 4-2-201, C.R.S., and lease contracts which are governed by section 4-2.5-201, C.R.S., in the following cases every agreement shall be void, unless such agreement or some note or memorandum thereof is in writing and subscribed by the party charged therewith: **(a)** Every agreement that by the terms is not to be performed within one year after the making thereof; **(b)** Every special promise to answer for the debt, default, or miscarriage of another person; **(c)** Every agreement, promise, or undertaking made upon consideration of marriage, except mutual promises to marry. Parties to an express contract, cannot simultaneously have a contract implied in fact. *DCB Cons. Col, In, v. Central City Development Co*., 940 P.2d 958 (Colo App. 1996). However, a contract implied in fact may be found where the express contract is held invalid. To be enforceable, a contract implied in fact requires mutual assent to an exchange for legal consideration. *Winter v. Industrial Claim Appeals Office*, 321 P.3d 609 (Colo. App. 2013) The Colorado Uniform Premarital and Marital Agreements Act also prevents premarital or marital agreements from addressing matters of a child's right to support or limits a remedy available to a victim of domestic violence. **C.R.S. 14-2-310(2).** "**(2)** A term in a premarital agreement or marital agreement is not enforceable to the extent that it: **(a)** Adversely affects a child's right to support; **(b)** Limits or restricts a remedy available to a victim of domestic violence under law of this state other than this part 3; **(c)** Purports to modify the grounds for a court-decreed legal separation or marital dissolution available under law of this state other than this part 3; **(d)** Penalizes a party for initiating a legal proceeding leading to a court-decreed legal separation or marital dissolution; or **(e)** Violates public policy."

	C.R.S. 13-80-101 provides for a general three-year statute of limitations on all contract actions **C.R.S. 18.1.3-406(2)(a)** defines a crime of violence as follows: **(I)** "Crime of violence" means any of the crimes specified in subparagraph (II) of this paragraph (a) committed, conspired to be committed, or attempted to be committed by a person during which, or in the immediate flight therefrom, the person: **(A)** Used, or possessed and threatened the use of, a deadly weapon; or **(B)** Caused serious bodily injury or death to any other person except another participant. **(II)** Subparagraph (I) of this paragraph (a) applies to the following crimes: **(A)** Any crime against an at-risk adult or at-risk juvenile; **(B)** Murder; **(C)** First or second degree assault; **(D)** Kidnapping; **(E)** A sexual offense pursuant to part 4 of article 3 of this title; **(F)** Aggravated robbery; **(G)** First degree arson; **(H)** First degree burglary; **(I)** Escape; **(J)** Criminal extortion; or **(K)** First or second degree unlawful termination of pregnancy. **(b)** **(I)** "Crime of violence" also means any unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim. For purposes of this subparagraph (I), "unlawful sexual offense" shall have the same meaning as set forth in section 18-3-411 (1), and "bodily injury" shall have the same meaning as set forth in section 18-1-901 (3)(c). **(II)** The provisions of subparagraph (I) of this paragraph (b) shall apply only to felony unlawful sexual offenses. **(c)** As used in this section, "at-risk adult" has the same meaning as set forth in section 18-6.5-102 (2), and "at-risk juvenile" has the same meaning as set forth in section 18-6.5-102 (4).
6. COLORADO COMMITTEE COMMENTS	The committee suggests adding a new (f), modeled after the Uniform Premarital and Marital Agreement Act, expressly providing that parties to a cohabitation agreement cannot contract with each other in a manner that violates public policy.

	One member of the committee commented that there are many exceptions to the application of the Statute of Frauds, making it almost meaningless as a defense to oral contracts.
7. RECOMMENDATION	Adopt Section 6 as amended.

COMMENTS

Section 6 sets forth the general rules governing a cohabitants' agreement. A cohabitant may bring claims under both Sections 6 and 7. A state will handle such claims in the same way as it handles other lawsuits with both contractual and equitable claims.

Example: A and B are cohabitants. They have a cohabitants' agreement, providing that A can live in B's condo so long as A makes the car payment. In fact, A makes the car payment and also pays for a new furnace because B loses a job at the start of the COVID-19 pandemic. A and B terminate their relationship, and B locks A out of the condo. A may have both a contractual and an equitable claim (based on payment for the new furnace), as well as a claim under state and federal law that prohibited evictions during the pandemic emergency.

Subsection (b) provides that contributions to the relationship may constitute consideration for a cohabitants' agreement. This provision will abrogate decisions in which courts have been reluctant to find that domestic services are adequate. See Antognini, supra; see, e.g., Smith v. Carr, No. CV 12-3251-CAS JCGX, 2012 WL 3962904, at *4 (C.D. Cal. Sept. 10, 2012); Rabinowitz v. Suvillaga, No. 17 CVS 244, 2019 WL 386853, at *8 (N.C. Super. Jan. 28, 2019); but see Knauer v. Knauer, 470 A.2d 553 (Pa. Super. Ct. 1983).

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

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

The Statute of Frauds generally applies to invalidate a promise that, by its terms, cannot be performed within one year, and could thus be applicable to some cohabitants' agreements. "[T]he enforceability of a contract under the one-year provision does not turn on the actual course of subsequent events, nor on the expectations of the parties as to the probabilities." Restatement (Second) of Contracts § 130 cmt. (1981). And, some jurisdictions allow part performance to serve as reliable enough evidence of the agreement to take it outside the statute. Robert E. Scott and Jody S. Kraus, Contract Law and Theory 521 (5th ed. 2013); Jody S. Kraus & Robert E. Scott, Contract Design and the Structure of Contractual Intent, 84 N.Y.U. L. Rev. 1023, 1044 (2009). Similarly, in some jurisdictions, when a promisor makes a promise "which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce the action or forbearance," then the promise "is enforceable notwithstanding the Statute of Frauds if injustice can be avoided only by enforcement of the promise." Restatement (Second) of Contracts § 139 (1981); but see Olympic Holding Co. v. ACE Ltd., 909 N.E.2d 93, 100 (Ohio 2009)("we hold that a party may not use promissory estoppel to bar the opposing party from asserting the affirmative defense of the statute of frauds, which requires that an enforceable contract be in writing and signed by the party to be charged, but may pursue promissory estoppel as a separate remedy").

Example: A and B are cohabitants. A works primarily at a business, and B works sometimes in the business but also in the home. A orally promises to take care of B by providing B a share of the business in

return for B taking care of the home during B's life. The promises do not fall within the one-year provision of the Statute of Frauds, since B's life may terminate within a year. Restatement (Second) of Contracts § 130 (1981). Moreover, if A and B cohabit for a full year after the promise is made, that is sufficient indicia that the promise was made to remove the agreement from the statute.

Subsection (d) provides a reminder of the general rule that child support obligations have priority over other claims to the income of the payor. UCERA does not affect child support determinations or child support obligations.

Subsection (e) protects the rights of victims of crime. It ensures that their remedial rights relating to the crime are not lost through a cohabitants' agreement. For example, a term in an agreement which provided that a cohabitant could not pursue a civil protection order would be voidable. Similarly, a provision in a cohabitants' agreement which purported to give a cohabitant a right or interest in payments the other cohabitant received from or through the perpetrator, in an administrative or civil proceeding, would be voidable. A provision in an agreement that would require a crime victim to pursue a civil, criminal, or administrative remedy is also presumed to be coercive and therefore voidable.

It should be noted that Section 6 governs any express, oral, or implied-in-fact agreement or contract. Section 7 deals with equitable remedies, including quasi-contract.

The definition makes clear that a valid cohabitants' agreement can waive any and all rights one might have against the other or preclude any or all claims against each other.

Uniform Cohabitant's Economic Remedies Act

1. Section 7	
2. Subject	Equitable Relief
3. Proposed Text 14-16-107	**14-16-107. Equitable relief.** (1) Unless maintaining the action is inconsistent with a valid cohabitants' agreement, a cohabitant may commence an equitable action against the other cohabitant concerning entitlement to property based on contributions to the relationship. The action is in addition to any remedy otherwise available to the cohabitant under this Article 16 or other law. (2) An equitable claim based on contributions to the relationship accrues on termination of cohabitation and is subject to equitable defenses. (3) In addition to other law governing an equitable claim, the court adjudicating a claim under this section shall consider: (a) the nature and value of contributions to the relationship by each cohabitant, including the value to each cohabitant and the market value of the contributions; (b) the duration and continuity of the cohabitation; (c) the extent to which a cohabitant reasonably relied on representations or conduct of the other cohabitant; (d) the extent to which a cohabitant demonstrated an intent to share, or not to share, property with the other cohabitant; and (e) other relevant factors.
4. National Conference of Commissioners on Uniform State Law Comments	See attached Comments
5. Colorado Law	Law and equity have been merged in our state since the earliest of time of statehood. *Am. Family Mut. Ins. Co. v. DeWitt*, 218 P.3d 318, 322 (Colo. 2009). The General Assembly recognized this merger in 1877 when it enacted the Code of Civil Procedure. The distinction between actions at law and suit in

equity, and the distinct form of actions, and suit heretofore existing are abolished, and there shall be in this State but one form of civil action for the enforcement or protection of private rights, and the redress or prevention of private wrongs, which shall be the same at law and in equity, and which shall be denominated a civil action…". *Hickerson v. Vessels*, 316 P.3d 620 (Colo. 2014).

Colorado District Courts sitting in probate, as well as the Denver Probate Court, have full equitable powers. *C.R.S. § 15-10-302; C.R.S. § 13-9-103(3); Lembach v. Lembach,* 622 P.2d 606 (Colo.App.1980). The probate court has authority to determine every legal and equitable question arising in connection with decedent's estates. *In re Estate of Murphy*, 195 P.3d 1147 (Colo.App.2008) held that the probate court had subject matter jurisdiction from a combination of sources: Art. VI §9 of the Colorado Constitution; C.R.S. §15-11-302 granting jurisdiction over all subject matter vested in Art. VI of the Colorado Constitution and articles 1 to 10 of Title 13 of the Colorado Revised Statutes; and more specifically C.R.S. §13-9-103.

Restatement (Third) Restitution and Unjust Enrichment §1, cmt. (a)

A person who is unjustly enriched at the expense of another is subject to liability in restitution. The Restatement expresses the rule of law laid down by Lord Mansfield in 1760. "In one word, the gist of this kind of action is, that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money."

Liability in restitution derives from receipt of a benefit whose retention without payment would result in the unjust enrichment of the defendant at the expense of the claimant. The usual consequence of the liability is that the defendant must restore the benefit in question, or else pay money (surcharge) in the amount necessary to eliminate the unjust enrichment.

The law of restitution is predominantly the law of unjust enrichment. A party claiming unjust enrichment must prove that (1) the defendant received a benefit, (2) at the plaintiff's expense, (3) under circumstances that would make it unjust for the defendant to retain the benefit without commensurate compensation. *Gagne v. Gagne*, 338 P.3d 1152, 1168

	(Colo.App. 2014). The imposition of a constructive trust is a remedy to prevent unjust enrichment. *id.* ***Salzman v. Bachrach***, 996 P.2d 1263 (Colo. 2000) In *Salzman v. Bachrach*, 996 P.2d 1263 (Colo. 2000), the Colorado Supreme Court held that a cohabitation agreement of the parties did not bar claims of quasi contract or unjust enrichment by one party against the other. In this case, Erwin Bachrach (Bachrach) and Roberta Salzman (Salzman) sold their respective apartment and townhouse and purchased land and built a residence together. Bachrach contributed $167,000 toward the residence and free drafting and planning services for construction of the residence home. Salzman contributed $353,000 toward the residence . After the residence was completed, Bachrach quitclaimed his interest in the property to Salzman so she could continue to receive monthly maintenance from her ex-husband. After a year of living together Salzman changed the locks on the residence and put a sign on the front door which said 'KEEP OUT – THIS MEANS YOU ERWIN." Bachrach sued Salzman seeking partition of the property under the theory they were joint venturers in the property. Bachrach also claimed that Salzman would be unjustly enriched if permitted to keep his contribution and benefit of his services. Salzman counter-claimed alleging that Bachrach's services were sub-par and that the consideration was a co-habitation agreement which included sexual relations which violated public policy. In addition, she asserted unclean hands in that Bachrach had written a letter to Salzman's ex-husband stating that he had no interest in the property. The Eagle County District Court dismissed Bachrach's complaint and Salzman's counter-claim. Bachrach and Salzman appealed. The Colorado Court of Appeals held that Salzman would be unjustly enriched if she were allowed to keep the property and Bachrach's contributions. Salzman again argued that the consideration given to Bachrach was a co-habitation agreement which she argued was against public policy and any judgment for Bachrach would defeat public policy. The Colorado Court of Appeals held that two individuals may contract with each other so long as sexual relations are merely incidental to the agreement and not considered consideration for the agreement. The Court of

	Appeals further discussed the substantial change in demographics in the last 40 years; "From 1970-1993 alone the number of unmarried couple households in the US increased 571%, from 523,000 to 3,510,000." The Court of Appeals stated: "Courts throughout the country are now faced with increased regularity the controversies arising out of breakup of these relationships." *Id.* At 1267. The Colorado Court of Appeals remanded the case back to the trial court directing the court to address whether the doctrine of unclean hands should limit Bachrach's claim for relief. Specifically, the court found that Bachrach stated in writing that he had no interest in the residence for the express purpose of deceiving Salzman's ex-husband and a court in Florida. On the other hand, the trial court may conclude that Bachrach did so at Salzman's urging and that, ultimately, she benefited far more from the deception than did Bachrach. In addition, the Court of Appeals directed the trial court to determine the exact worth of Bachrach's contribution and the reasonable rental value for the periods Bachrach lived in the residence. The parties then filed a Petition for *Certiorari* to review the Court of Appeals decision. The Colorado Supreme Court found that Bachrach established a claim of unjust enrichment and therefore was entitled to restitution for at least some of his contributions to the residence titled in Salzman's name. Accordingly, the Supreme Court affirmed the Court of Appeals and remanded the case to the trial court for a determination of the amount of restitution. The Colorado Supreme Court as part of its analysis looked to the Restatement of Restitution which states: [a] person who has been unjustly enriched at the expense of another is required to make restitution to the other." In addition: "A person obtains restitution when he is restored to the position he formally occupied either by the return of something which he formally had or by the receipt of monetary equivalent. *Id.* § 1.cmt. (a). Unjust enrichment is a form of quasi contract or a contract implied in law so as such it is an equitable remedy and does not depend on any contract oral or written. The theory does not require any promise or privity between the parties rather it is a judicially created remedy designed to avoid benefit to one and the unfair detriment of another. (Citing as authority *Cabelevision of Breckenridge, Inc. v. Tannhauser Condominium Association*, 649 P. 1093, 1097 (Colo. 1982)). The Colorado Supreme Court found in Colorado a person

	seeking recovery for unjust enrichment must prove: (1) at Plaintiff's expense; (2) Defendant received a benefit; (3) under circumstances that would have made it unjust for the defendant to retain the benefit without paying. *Salzmasn*, supra at p. 1265. Finally, the Supreme Court held that in determining Bachrach's claim is not barred by the parties cohabitation agreement it remanded the case to the Court of Appeals to be returned to the trial court for further factual determination regarding the exact worth of Bachrach's contribution and the reasonable rental value for the periods Bachrach lived in the house. In addition, the trial court should determine whether the unclean hands doctrine should bar any portion of Bachrach's recovery. See attached. ***Lewis v. Lewis***, 189 P.3d 1134 (Colo. 2008) In *Lewis v. Lewis*, 189 P.3d 1134 (Colo. 2008) the trial court found that the defendants, Frank Lewis (Frank) and Lucy Lewis (Lucy) (collectively "the Lewises") were unjustly enriched when they failed to compensate their daughter-in-law, Cassandra Lewis (Cassandra), for her contribution to a residence that was sold by the Lewises for a significant profit. In this case, Frank purchased a residence for a sale price of $29,500.00 and made a $5,000 down payment and executed a mortgage to the seller for the balance. The mortgage was calculated over 20 years of monthly payments plus interest of $236.43. Cassandra and the Lewises son, Sammy, made monthly mortgage payments directly to the Lewises. The Lewises then paid the same amount to the mortgage holder. At trial, Cassandra testified that the Lewises told her that "That they put down $5,000 as a gift on the house as a surprise for us." The trial court made a finding that the Lewises proposed this arrangement to "ensure that the payments were made because there was concern that their son, Sammy, who had a drinking problem, might not otherwise make the payments. The trial court found that Cassandra and Sammy faithfully made all payments for 14 years, they occupied the residence until their separation. In addition, the trial court found that Cassandra and Sammy were named as insureds on the homeowners insurance policy. The trial court found that Cassandra and Sammy paid the full cost of insuring the house as well as real estate taxes, utilities, and maintenance. Cassandra and Sammy also undertook various improvements to

	the property. Over 14 years in which Cassandra and Sammy lived in the residence, they added carpet, vinyl flooring for the kitchen and bathroom, tiled the laundry room, painted the interior and exterior of the house, placed light fixtures, vanities, mirrors, and added ceiling fans. With regard the exterior of the residence Cassandra and Sammy replaced the driveway from a rock driveway to concrete. They added a chain-link fence, installed a satallite dish and built an above-ground pool. They also built and installed a basketball court and laid sod. After Cassandra and Sammy had children they decided to make an addition to the residence. Throughout the 14 years that Casandra and Sammy occupied the residence the Lewis' made several comments concerning property ownership. The Lewises testified at trial that they didn't put the house in Sammy's name because of his drinking problem. The Lewises also assured Cassandra that the residence was hers and she could live there as long as she wanted. After 16 years of marriage and 14 years of living in the residence Cassandra along with her two daughters moved out. The Lewises then sold the property for $122,000 and netted $108,879.86. Cassandra and Sammy's marriage dissolution was finalized on April 20, 2002. Cassandra filed a lawsuit against the Lewises claiming ownership of the residence. At trial Cassandra asserted to the court that the Lewises had gifted the property to her and Sammy and that the only way to enforce a mutual purpose of the parties and to prevent unjust enrichment to the Lewises was to place her in the shoes of the seller at the time the residence was sold. The Lewises argued that Sammy and Cassandra were renting the property; however, the Lewises did not claim rental property deductions on their income tax returns. The trial court found in favor of Cassandra and against the Lewises for an amount of $17,345.37. In the Minute Order the court noted that this amount was the difference between the original sales price of the house ($29,500) and the amount owed on the mortgage at the time of the same ($12,154.63) in addition to Cassandra's costs of $1,411.20. Cassandra appealed, and the Lewises cross-appealed. Cassandra claiming that the trial court erred when it failed to find in her favor for the entire sales price minus the existing

mortgage and down payment. The Lewises countered and asserted that the trial court's partial finding for Cassandra was unsupported by the facts and was unreasonable under applicable law. Upon review, the Colorado Court of Appeals vacated the trial court's judgment on the grounds that the trial court's two sentence minute order which did not contain findings of fact and conclusions of law was insufficient to give the appellate court a basis by which to undertake a review. On remand, after stating factual findings, the trial court changed its rulings and concluded that it was in error in its award of damages. The trial court ruled that Cassandra failed to prove the residence was a gift to her and Sammy. However, the trial court concluded that there was an oral agreement between the parties that allowed Cassandra and Sammy to acquire legal title to the property if they refinanced the loan balance and reimbursed the Lewises for the $5,000 down payment. The court then awarded Cassandra $103,879.86, that amount was the sale price of $122,000 minus the remaining balance on the note of $12,154.63 and the $5,000.00 down payment.

To arrive at its holding the trial court made several further findings and conclusions. First, the court concluded that the Colorado statute of frauds requiring that the agreement to transfer land be in writing, did not apply in the present case. The trial court found that in light of the close familiar connection between the parties there existed a "confidential relationship" which caused each party to "relax their guard that would have otherwise caused them to require the arrangement be in writing." Second, the trial court found that because of the confidential relationship, the parties agreement "was not at arm's length." Thus, the Lewises had a duty to deal fairly with Cassandra and Sammy regarding the residence. The trial court found that the Lewises violated this duty when they sold the property without informing Cassandra so that they could take advantage of her purchase option.

The Lewises appealed Cassandra's trial court award. The Court of Appeals held that Cassandra could not recover under her claim of resulting trust because there was no expressed trust nor did the Lewises intend that a third-party vender convey the property. Further, the Colorado Court of Appeals found that the Lewises were not unjustly enriched when they sold the property. The Court of Appeals stated that "A theory of unjust enrichment is a mixed question of law and fact." Thus, the panel reviewed the trial court's conclusion *de novo* finding that Cassandra and Sammy's failure to take advantage of their

	purchase option from the Lewises sold property made them mere tenants without standing to claim ownership right or equity. As a consequence, the Court of Appeals concluded that the enrichment of the Lewises by the contribution of Cassandra and Sammy to the property was not unjust. The Colorado Supreme Court granted *certiorari* and held that the Court of Appeals erred when it held unjust enrichment presents a mixed question of law and fact. The proper appellate review standard for unjust enrichment determination is abuse of discretion. The Supreme Court applied the abuse of discretion standard to determine that the trial court erred in finding that the Lewises were unjustly enriched in the present case. To analyze whether the trial court abused its discretion, the Colorado Supreme Court re-examined the third prong of an unjust enrichment claim and applied it to the specific circumstances in this case. In doing so, the court found that the claims of unjust enrichment by close family members or confidants require the trial courts employ a particularized legal standard to evaluate the parties' commonality and purpose. When a party deviates significantly from their mutual purpose, resulting in his enrichment at the expense of another close family member or confidant, he has been unjustly enriched. The Colorado Supreme Court, relying on *Salzman v. Bachrach,* held a person is unjustly enriched when he benefits as a result of unfair detriment to another. The proper remedy upon a finding of unjust enrichment is to restore the harmed party to the position he formerly occupied either by the return of something which he formerly had or by receipt in its monetary equivalent. Restatement of Restitution, Section 1, cmt. (a) (1937). The Colorado Supreme Court went on to hold that the third prong of unjust enrichment requires that: "the parties actions expressing mutual purpose should govern the third prong of the unjust enrichment which requires the trial court consider a situation involving failed gifts or failed contracts between close family members and confidants. In such case, malfeasance is not necessary to make a claim of unjust enrichment." Instead, "We conclude that when close family members or confidants act with mutual purpose, unjust enrichment occurs when one party benefits from the action that is a significant deviation from the mutual purpose." In this case there was no question that the Lewises were conferred a benefit at the expense to Cassandra. See attached.

6. Colorado Committee Comments	
7. Recommendations	

\\WA-APP01\USERS\HTUCKER\PROFESSI\UCERA 2022\UNIFORM COHABITANT ECONOMIC REMEDIES ACT - OUTLINE.2022-07-21.DOCX

UNIFORM COHABITANTS' ECONOMIC REMEDIES ACT

1. SECTION 8	
2. SUBJECT	**Effect of court order or judgment on third party.**
3. PROPOSED TEXT	**14-16-108** (1) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, A COURT ORDER OR JUDGMENT GRANTING RELIEF UNDER THIS ARTICLE 16 AGAINST A COHABITANT OR A COHABITANT'S ESTATE IS AN ORDER OR JUDGMENT IN FAVOR OF A GENERAL CREDITOR. (2) A COURT ORDER OR JUDGMENT GRANTING RELIEF UNDER THIS ARTICLE 16 MAY NOT IMPAIR THE RIGHTS OF A GOOD-FAITH PURCHASER FROM, OR SECURED CREDITOR OF, A COHABITANT. (3) A COURT ORDER OR JUDGMENT GRANTING RELIEF UNDER THIS ARTICLE 16 MAY NOT IMPAIR THE RIGHT OR INTEREST OF A COHABITANT'S SPOUSE OR CIVIL UNION PARTNER OR SURVIVING SPOUSE OR CIVIL UNION PARTNER TO THE COHABITANT'S PROPERTY UNLESS: (a) THE SPOUSE OR CIVIL UNION PARTNER HAD NOTICE OF THE PROCEEDINGS ON THE CLAIM AND AN OPPORTUNITY TO BE HEARD; (b) BEFORE ENTERING THE ORDER OR JUDGMENT, THE COURT DETERMINES BASED ON THE TOTALITY OF THE CIRCUMSTANCES THAT JUSTICE REQUIRES THAT ALL OR PART OF THE COHABITANT'S CLAIM SHOULD BE SATISFIED; AND (c) THE ORDER OR JUDGMENT PRESERVES AS MUCH OF THE SPOUSE'S OR CIVIL UNION PARTNER'S RIGHT OR INTEREST AS APPROPRIATE OR LEGALLY REQUIRED. *For other Alternatives and Legislative Note, see attached.*
4. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	See attached.

5. COLORADO LAW	Ceremonial Marriage – Section 14-2-101, et seq. Common Law Marriage – Section 14-2-109(2)(a) Civil Unions – Section 14-5-101, et seq. Domestic Partnerships – (Denver and Boulder Counties will register domestic partnerships) Designated Beneficiary Agreements – Section 15-22-101 et seq. Will contracts – 15-11-514 Harmless error wills – 15-11-503 Elective share – 15-11-201 et seq. Wills – 15-11-502 and 503 Colorado Probate Code Definitions – 15-10-201 *Salzman v. Bachrach*, 9956 P.2d 1263 (Colo. 2000).
6. COLORADO COMMITTEE COMMENTS	The subcommittee selected Alternative B because it requires notice to a spouse or civil union partner prior to their rights being affected and it gives the judicial officer the ability to tailor the result as appropriate under the circumstances presented. Given the limited nature of the rights of domestic partners and designated beneficiaries under Colorado law, the subcommittee chose not to allow for the potential favoring of those relationships over the those of a cohabitant. This treatment is consistent with the treatment under the Colorado Probate Code. The subcommittee determined that distinguishing between equitable and contractual claims would only complicate litigation over these types of claims, increase costs and waste judicial resources. In addition, Colorado's Probate Code does not distinguish between equitable and contractual claims for creditors. The subcommittee does not intend to expand the rights of cohabitants to give them special status – only to convey the

	right to contract in these circumstances. Individuals can always give the cohabitant a special status by taking actions beyond signing a cohabitants' agreement. The subcommittee did consider the following issues regarding cohabitants: -Priority to serve as guardian, conservator or personal representative. -Priority of cohabitant's claim over other general creditors. -Including a cohabitant explicitly in the definition of interested person in regard to decedent's estates, guardianships, conservatorships or trust administration. -Whether a cohabitants' agreement can also be a will contract. -Whether a cohabitants' agreement can be construed as wills under traditional, holographic or harmless error principles similar to designed beneficiary agreements. -Whether the term "general creditor" needs to be defined. -Potential amendment of CRS 15-11-214(5) to include cohabitants. -Whether a cohabitant be treated like a designated beneficiary agreement for intestacy purposes? See 15-11-102.5. -Whether a cohabitant can be a bona fide purchaser. -How cohabitants will be treated under CRS 15-15-103. -Whether to define "general creditor", a term used in Section 8.
7. RECOMMENDATION	Adoption of uniform law language with Alternative B as well as certain amendments to existing Colorado statutes.

UNIFORM LAW COMMISSION COMMENTS TO SECTION 8

UCERA treats a judgment in favor of a cohabitant as a judgment in favor of a general creditor, whether the judgment is against a living cohabitant or a deceased cohabitant's estate. Secured creditors of, and good faith purchasers from, a cohabitant who generally have no notice, actual or constructive, of the cohabitants' relationship, are protected vis-à-vis claims of the other cohabitant.

UCERA includes a cohabitant who is married to someone else within the purview of UCERA. Were it otherwise, anyone who cohabits with an individual who is married would risk having an otherwise legitimate contract or equitable claim denied. Including married cohabitants ensures that equity is done between the cohabitants. The reality is that many cohabitants are married to others. As a policy matter, however, UCERA recognizes that an enacting state may want to enhance the rights of a spouse of a cohabitant.

A state that wishes to treat the spouse of a cohabitant as a general creditor should not adopt any of the alternatives for bracketed subsection (c). The alternatives give states flexibility to consider whether and when the claim of a spouse should come before the claim of a current cohabitant. Four alternatives are included. Each prioritizes the rights and interests of a spouse of a cohabitant over the claims of the other cohabitant in slightly different ways. An enacting state should adopt the alternative which best represents the state's public policy regarding marriage or spousal rights and cohabitation.

Example 1: A is married to B. B is cohabiting with C. B executes a will that leaves all of B's property to X, B's brother. B dies. C asserts both equitable and contractual claims under this act to be satisfied from B's estate. A asserts an elective share claim against B's estate.

Under Alternative A, once A's elective share has been satisfied, C's equitable and contractual claims contractual claims can be enforced against any remaining property in the estate.

Under Alternative B, after the spouse receives notice and an opportunity to be heard in the proceeding between the cohabitants, a court can determine that justice requires satisfaction of the cohabitant's contractual and equitable claims prior to satisfaction of the spouse's elective share. But even if the court finds that justice requires a remedy for the cohabitant, the court must tailor the remedy to provide as much protection as is appropriate or legally required for the spouse's interests.

Under Alternative C, prioritizing a spouse's claims only over equitable claims, C's contractual claims would be treated like other creditor claims, potentially reducing the size of the estate against which A can assert an elective share. C's equitable claims could only be asserted after A's elective share has been satisfied.

Under Alternative D, C's contractual claims would be treated like other creditor claims. After the spouse receives notice and an opportunity to be heard in the proceeding between the cohabitants, a court can determine that justice requires satisfaction of the cohabitant's equitable claims prior to satisfaction of the spouse's elective share. But even if the court finds that justice

requires a remedy for the cohabitant, the court must tailor the remedy to provide as much protection as is appropriate or legally required for the spouse's interests.

Example 2: A is married to B. B is cohabiting with C. B dies intestate in State X, with no children or parents who survive. Under the law of State X, the surviving spouse receives the entire intestate estate.

Under Alternative A, there is no property available to satisfy any equitable or contractual claims that C might assert against the estate.

Under Alternative B, after the spouse receives notice and an opportunity to be heard in the proceeding between the cohabitants, a court can determine that justice requires satisfaction of the cohabitant's contractual and equitable claims prior to satisfaction of the spouse's intestate share, although. But even if the court finds that justice requires a remedy for the cohabitant, the court must tailor the remedy to provide as much protection as is appropriate or legally required for the spouse's interests.

Under Alternative C, C's contractual claims would be treated like other creditor claims, potentially reducing the size of the intestate estate available to A, but none of B's remaining property would be available to satisfy any equitable claim that C might assert against the estate.

Under Alternative D, C's contractual claims would be treated like other creditor claims. After the spouse receives notice and an opportunity to be heard in the proceeding between the cohabitants, a court can determine that justice requires satisfaction of the cohabitant's equitable claims prior to satisfaction of the spouse's intestate share. But even if the court finds that justice requires a remedy for the cohabitant, the court must tailor the remedy to provide as much protection as is appropriate or legally required to the spouse's interests.

Whether or not a state adopts any of the alternative subsection (c) provisions, certain retirement benefits and pensions are protected by federal and state law. ERISA provides that a spouse must receive certain benefits unless the spouse waives those benefits, and ERISA preempts all state law to the contrary. Most pensions and retirement plans are covered by ERISA, whereas typically Individual Retirement Accounts (IRAs) are not. In addition to ERISA, some states protect a spouse's rights to retirement assets. *See* Jonathan Barry Forman, *Fully Funded Pensions*, 103 Marq. L. Rev. 1205, 1302 (2020) ("The rules governing IRAs are even more relaxed: an individual with an IRA is free to spend the balance in her account as she wishes and, furthermore, is free to designate whoever she wants as her beneficiary").

If a state's law provides that individuals in a civil union or domestic partnership have a right comparable to individuals in a marriage, the state should insert the appropriate terms in addition to "spouse."

Legislative Note:

The previous alternatives provided five options for treating a claim of a spouse and a cohabitant to a married cohabitant's property:

(1) A state that chooses to treat a cohabitant's claim as a general creditor's claim in all cases should adopt only subsections (a) and (b) and not adopt any of the alternatives for subsection (c).

(2) A state that chooses to insulate a spouse from both contractual and equitable claims of a cohabitant should adopt Alternative A.

(3) A state that chooses 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 claim against a married cohabitant should adopt Alternative B. [Subcommittee selection – italics added.]

(4) A state that chooses to treat a cohabitant's contractual claim as a general creditor's claim and insulate a spouse only from an equitable claim under Section 7 should adopt Alternative C.

(5) A state that chooses to treat a cohabitant's contractual claim as a general creditor's claim and allow a court under certain circumstances to find that justice requires some satisfaction of the cohabitant's equitable claim under Section 7 against a married cohabitant should adopt Alternative D.

If a state's law provides that individuals in a civil union or domestic partnership have a right comparable to individuals in a marriage, the state should insert the appropriate terms in addition to "spouse".

Other Alternatives:

Alternative A
(3) A COURT ORDER OR JUDGMENT GRANTING RELIEF UNDER THIS ARTICLE 16 MAY NOT IMPAIR THE RIGHT OR INTEREST OF A COHABITANT'S SPOUSE OR CIVIL UNION PARTNER OR SURVIVING SPOUSE OR CIVIL UNION PARTNER TO THE COHABITANT'S PROPERTY.

Alternative B – in proposed text.

Alternative C
(3) A COURT ORDER OR JUDGMENT GRANTING RELIEF BASED ON AN EQUITABLE CLAIM PURSUANT TO SECTION 14-16-107 MAY NOT IMPAIR THE RIGHT OR INTEREST OF A COHABITANT'S SPOUSE OR CIVIL UNION PARTNER OR SURVIVING SPOUSE OR CIVIL UNION PARTNER TO THE COHABITANT'S PROPERTY.

Alternative D
(3) A COURT ORDER OR JUDGMENT GRANTING RELIEF BASED ON AN EQUITABLE CLAIM PURSUANT TO SECTION 14-16-107 MAY NOT IMPAIR THE RIGHT OR INTEREST OF A COHABITANT'S SPOUSE OR CIVIL UNION PARTNER OR SURVIVING SPOUSE OR CIVIL UNION PARTNER TO THE COHABITANT'S PROPERTY UNLESS:

(a) THE SPOUSE OR CIVIL UNION PARTNER HAD NOTICE OF THE PROCEEDINGS ON THE CLAIM AND AN OPPORTUNITY TO BE HEARD;

(b) BEFORE ENTERING THE ORDER OR JUDGMENT, THE COURT DETERMINES BASED ON THE TOTALITY OF THE CIRCUMSTANCES THAT JUSTICE REQUIRES THAT ALL OR PART OF THE COHABITANT'S CLAIM SHOULD BE SATISFIED; AND

(c) THE ORDER OR JUDGMENT PRESERVES AS MUCH OF THE SPOUSE'S OR CIVIL UNION PARTNER'S RIGHT OR INTEREST AS APPROPRIATE OR LEGALLY REQUIRED.

UNIFORM COHABITANTS' ECONOMIC REMEDIES ACT

1. SECTION 9	
2. SUBJECT	**PRINCIPLES OF LAW AND EQUITY**
3. PROPOSED TEXT	14-16-109 The principles of law and equity supplement this Article 16 except to the extent inconsistent with this Article 16.
4. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	None
5. COLORADO LAW.	
6. COLORADO COMMITTEE COMMENTS	
7. RECOMMENDATION	Adopt.

For examples of common law defenses relating to formation and "voluntariness" see, e.g., CJI 30:22 Undue Influence; CJI 30:23 Duress; CJI 30:29 Minority; CJI 30:30 Mental Incapacity, CJI 30:21 Fraud in the Inducement. Other common law defenses may include CJI 30:24 Impossibility of Performance; CJI 30:25 Prevention of Performance by Plaintiff; CJI 30:26 Inducing a Breach by Words or Conduct; CJI 30:27 Waiver of Breach of Contract; CJI 30:28 Estoppel to Claim Damages for Breach of Contract; CJI 30:31 Statute of Limitations; CJI 30:32 Rescission or Cancellation by Mutual Consent; CJI 30:33 Accord and Satisfaction; CJI 30:34 Release of Claims.

This section is similar to the UPMAA, C.R.S. § 14-2-305 "Unless displaced by a provision of this part 3, principles of law and equity supplement this part 3."

As to writing requirements, section 106(1) provides that a cohabitants' agreement may be oral, in a record, express, or implied-in-fact. As a note, the Colorado Supreme Court in In re Marriage of Zander, 2021 CO 12, ¶¶ 21-22 rejected the partial performance doctrine to the writing requirements of the CMAA. The court held:

> ¶21 And, like the division, we are not persuaded by the district court's reliance on the partial performance doctrine as an exception to the writing and signature requirements. While partial performance may allow enforceability of some oral agreements under general contract law, that is no basis to import an exception into the CMAA. "We will not judicially legislate by reading a statute to accomplish something the plain language does not suggest, warrant or mandate." *Scoggins v. Unigard Ins. Co.*, 869 P.2d 202, 205 (Colo. 1994). Had the legislature wanted to permit the enforcement of partially performed oral marital agreements, it presumably would have said so. Instead, it proclaimed, in no uncertain terms, that all marital agreements must be in writing and signed by both parties. Hence, regardless of whether there was partial performance by the parties here, the agreement cannot be enforced because it was neither in writing nor signed by both parties.
>
> ¶22 We recognize the concern expressed by amici curiae that today's decision might detrimentally impact couples who cannot afford to retain an attorney to assist them in executing a valid agreement that overcomes the presumption of marital property. But "[i]t is not for the courts to enunciate the public policy of the state if, as here, the General Assembly has spoken on the issue." *Grossman v. Columbine Med. Grp., Inc.*, 12 P.3d 269, 271 (Colo. App. 1999) (citing *682 *Swieckowski v. City of Fort Collins*, 934 P.2d 1380, 1387 (Colo. 1997)). "The General Assembly is the branch of government charged with creating public policies, and the courts may only recognize and enforce such policies." *Crawford Rehab. Servs., Inc. v. Weissman*, 938 P.2d 540, 553 (Colo. 1997). To the extent that a change in the law is desirable, the place to accomplish that is at the state legislature, across the street from our courthouse.

UNIFORM COHABITANTS' ECONOMIC REMEDIES ACT

1. SECTION 10	
2. SUBJECT	**UNIFORMITY OF APPLICATION AND CONSTRUCTION**
3. PROPOSED TEXT 14-16-110	In applying and construing this Article 16, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.
4. COMMENTS	None
5. COLORADO LAW.	This section is similar to other uniformity of application sections in other uniform laws enacted in Colorado.
6. COLORADO COMMITTEE COMMENTS	None
7. RECOMMENDATION	Adopt

UNIFORM COHABITANTS' ECONOMIC REMEDIES ACT

1. SECTION 11	
2. SUBJECT	**RELATION TO "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT."**
3. PROPOSED TEXT 14-16-110	This Article 16 modifies, limits, or supersedes the "Electronic Signatures In Global and National Commerce Act", 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. Sec. 7003(b).
4. COMMENTS	None
5. COLORADO LAW.	
6. COLORADO COMMITTEE COMMENTS	None
7. RECOMMENDATION	Adopt.

UNIFORM COHABITANTS' ECONOMIC REMEDIES ACT

1. SECTION 12	
2. SUBJECT	**TRANSITIONAL PROVISIONS**
3. PROPOSED TEXT **14-16-110**	(1) This Article 16 applies to a Cohabitants' Agreement made before, on, or after the effective date of this Article 16. (2) This Article 16 applies to an equitable claim under this Article 16 that accrues before, on, or after the effective date of this Article 16.
4. COMMENTS	None
5. COLORADO LAW.	This effective date provision is similar to those enacted under the UPC and the CUTC.
6. COLORADO COMMITTEE COMMENTS	None
7. RECOMMENDATION	Adopt.

Uniform Cohabitants' Economic Remedies Act

Prefatory Note

The Uniform Cohabitants' Economic Remedies Act (UCERA) provides a mechanism to address the division of cohabitants' property interests when the cohabitation ends. UCERA does not create any special status for cohabitants. UCERA enables cohabitants to exercise the usual rights of individual citizens of a state to contract with others and to bring equitable claims against others in appropriate circumstances by affirming the capacity of each cohabitant to contract with the other and to claim a contract or equitable remedy against the other. Such claims may proceed without regard to any intimate relationship that exists between the cohabitants and without subjecting them to hurdles that would not be imposed on litigants of similar claims. Significantly, UCERA recognizes the value of non-sexual services, activities, and efforts of a party to the relationship as a basis for contractual and equitable claims.

UCERA responds to the increase in the number of nonmarital cohabitants in the United States over the past half-century. The Census first began including "Unmarried Partner" as a possible relationship in 1990.[1] As of 2019, more than 17 million people, representing seven percent of American adults, were cohabiting.[2] More adults have cohabited than have been married.[3] The number of older adults who cohabit is also growing. In 1996, only two percent of partners in cohabiting households were ages 65 or older; by 2017, that number had tripled to six percent.[4] Just over six percent of partners in cohabiting households earn over $90,000 per year, while more than half earn less than $30,000.[5]

Cohabiting relationships vary greatly. Cohabitants may share financial responsibilities during their cohabitation, or they may keep their finances separate. One cohabitant may move into a dwelling the other had acquired separately. They may acquire property together. Both may work, neither may work, or one may work and the other take care of the household. There are countless other arrangements.

In 1976, the California Supreme Court recognized potential economic rights between cohabitants, notwithstanding the nature of their relationship.[6] The court held that unmarried

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[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 Earner*s (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] See *Marvin v. Marvin*, 557 P.2d 106 (Cal. 1976); Courtney G. Joslin, *Autonomy in the Family*, 66 UCLA L. Rev. 912, 927 (2019)("A plurality of states fully embrace *Marvin's* approach permitting claims as between former cohabitants based on express contract, implied contract, and equitable theories").

cohabitants could enter into enforceable contracts to share earnings or property or for support, so long as the parties' sexual relationship is not an inseparable part of the agreement. The court identified a broad range of possible remedies such as express or implied contract (including partnership and joint venture) and a cluster of other equitable doctrines such as quantum meruit, constructive trust, resulting trust, unjust enrichment, and equitable lien.

As cohabitation and its acceptance have changed over the years, so too have available claims and remedies at separation and death that derive from cohabitation. Twenty years ago, the American Law Institute summarized the state of American law regarding unmarried cohabitants as follows:

> In the United States, courts generally rely upon contract law when they conclude that cohabiting parties may acquire financial obligations to one another that survive their relationship. The great majority of jurisdictions recognize express contracts, and only a handful of them require that the contract be written rather than oral. Jurisdictions split on whether to recognize implied contracts. Those that do recognize implied contracts differ in their inclination to infer contractual undertakings from any given set of facts. Some courts reach much further than others. In doing so, they appear to vindicate an equitable rather than a contractual principle.[7]

While UCERA is an enabling act, the ALI proposed an alternative, perhaps radical, approach to cohabitancy in the *Principles of Family Dissolution* (ALI *Principles*).[8] The ALI *Principles* would extend the marital remedies of equitable distribution of property and alimony to cohabitants. However, the ALI's approach has not been fully adopted by any state. Closest has come the State of Washington, in which a long-term marriage-like cohabitation with a sharing of finances and other indicia of an interdependent relationship can give rise to a presumptive application of community property principles, both at dissolution and at death, but not to ongoing support obligations.[9] In addition, some jurisdictions have adopted systems that

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[7] American Law Institute, *Principles of the Law of Family Dissolution: Analyses and Recommendation* § 6.03 cmt (2002).

[8] *Id*. Chapter 6.

[9] *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). However, some other countries have enacted legislation similar to the system set out in the ALI *Principles*. 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 [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)

allow a nonmarital couple to opt into various obligations towards one another, such as through domestic partnership, civil union, or designated beneficiary statutes.[10]

Today, a number of states recognize rights between nonmarital cohabitants, notwithstanding the nature of their relationship, including, for example, Alaska, Arizona, Arkansas, Colorado, Connecticut, Kansas, Missouri, North Carolina, and Wisconsin. However, these states and others have varying approaches. Some states allow cohabitants to assert claims based on both express or implied contracts as well as equitable claims,[11] some states have imposed writing requirements on cohabitants' agreements,[12] some states have no reported cases, and a few states refuse to accept domestic or household services as lawful consideration, reasoning that such services are inextricably intertwined with the sexual relationship and are

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[10] E.g., C.R.S.A. § 15-22-104 (2021); NCLR, *Marriage, Domestic Partnerships, and Civil Unions: Same-Sex Couples Within the United States* (2020), https://www.nclrights.org/wp-content/uploads/2015/07/Relationship-Recognition.pdf. Other countries have adopted opt-in systems. *See, e.g.,* 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 systems).

[11] E.g., *Boland v. Catalano*, 521 A.2d 142 (Conn. 1987) (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); *Salzman v. Bachrach*, 996 P.2d 1263 (Colo. 2000) (holding unjust enrichment claim by nonmarital cohabitant not barred by public policy, does not require agreement or promise); *Bonina v. Sheppard*, 78 N.E. 3d 128 (Mass. App. Ct. 2017) (holding that there is no presumption in Massachusetts that contributions in a cohabitation relationship are gratuitous; that the existence of a romantic relationship does not prevent a party from recovering from a former cohabitant under an unjust enrichment theory); *Sands v. Menard*, 904 N.W.2d 789 (Wis. 2017) (concluding that a claim for unjust enrichment may lie when "two people work together to acquire property 'through the efforts of both,'" regardless of their cohabitation relationship, citing *Watts*, but that the relationship does not itself create the claim for relief, and that a party seeking relief must still establish the elements of unjust enrichment); *Shaw v. Smith*, 964 P.2d 428 (Wyo. 1998) (in recognizing claim for unjust enrichment by cohabitant, requiring proof that (1) valuable services were provided to the defendant, (2) which were used and enjoyed by the defendant, (3) under circumstances which reasonably notified the defendant that the plaintiff expected payment, and (4) without payment the defendant would be unjustly enriched).

[12] 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).

typically provided without expectation of compensation when a couple shares a residence.

Without comprehensive statutory direction, courts address cohabitants' claims on a case-by-case basis. Illinois provides a good example of the discrimination unmarried cohabitants may face. Illinois recognizes claims between nonmarital cohabitants when those claims are independent of the relationship.[13] But as recently as 2016, the Illinois Supreme Court refused to recognize a claim between individuals because they were cohabitants.[14] The court emphasized the state's continuing interest in distinguishing between marital and nonmarital relationships. Significantly, the court suggested that the appropriate source for change was the state legislature, not the courts.[15]

Even in states that recognize remedies for nonmarital cohabitants, some courts are nonetheless reluctant to award relief. In declining to recognize a cohabitant's claim, courts have often referenced the meretricious nature of the couple's relationship or a desire to preserve marriage.[16] There is thus no predictable result when cohabitants dissolve their relationship or when one cohabitant dies. This unpredictability is enhanced when cohabitants move from state-to-state.

For purposes of UCERA, a "cohabitant" is defined as one member of a couple if the two individuals live together "as a couple" and are not married to each other. The term does not set a time limit as to how long the individuals must cohabit to meet the definition. Individuals who are minors and those who are too closely related to marry cannot be cohabitants. A cohabitant might be married to someone else. This definition has no application to other law. For example, other

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[13] *See* Hewitt v. Hewitt, 394 N.E.2d 1204 (Ill. 1979)("cohabitation by the parties may not prevent them from forming valid contracts about independent matters, for which it is said the sexual relations do not form part of the consideration"); *Spafford v. Coats*, 455 N.E.2d 241, 245 (Ill. App. Ct. 1983)("[w]e conclude that the claims of the plaintiff are substantially independent of the non-marital relationship of the parties and are not based on rights arising from their cohabitation"); *see also Blumenthal v. Brewer*, 69 N.E.3d 834, 856 (Ill. 2016) (barring claim between cohabitants "if the claim is not **independent** from the parties' living in a marriage-like relationship for the reason it contravenes the public policy").

[14] *Id.* at 856.

[15] *Id*. at 858 ("Until the legislature sees fit to change our interpretation of the public policy in Illinois . . .").

[16] 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).

state law that may govern modification or termination of spousal support upon cohabitation is not affected.[17]

Living "as a couple" is an intentionally fact-specific and broad standard. A sexual element is not required. If individuals living together are mere roommates, including them within UCERA does no harm; their claims and remedies will generally be identical whether under UCERA or other state law. On the other hand, had UCERA included an elaborate definition, litigants would spend considerable time and money attempting to establish that they were (or were not) cohabitants within the definition. The purpose of UCERA is to ensure that the nature of the parties' relationship is not a bar to their ability to bring claims against one another. The result of UCERA is that cohabitants have rights that are no more or fewer than other litigants.

UCERA recognizes that contractual and equitable claims can be based on the provision of non-sexual services, activities, and efforts by a party to the relationship. Courts have not always recognized the value of non-material contributions to a relationship, such as domestic services, as an adequate basis for recovery, reasoning instead that they are part of the cohabiting relationship and are thus rendered gratuitously.[18]

UCERA protects third parties. The interests of secured creditors of, and good faith purchasers from, a cohabitant, cannot be adversely affected by a remedy granted under UCERA.

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[17] *E.g.,* Ala. Code § 30-2-55 (2021)("Any decree of divorce providing for periodic payments of alimony shall be modified by the court to provide for the termination of such alimony upon petition of a party to the decree and proof that the spouse receiving such alimony . . .is living openly or cohabiting with a member of the opposite sex"); Del. Code Ann. tit. 13, § 1512 (2021)(" Unless the parties agree otherwise in writing, the obligation to pay future alimony is terminated upon the death of either party or the remarriage or cohabitation of the party receiving alimony"); La. Civ. Code Ann. art. 115 (2021)(alimony "is extinguished upon . . . a judicial determination that the obligee has cohabited with another person of either sex in the manner of married persons"); *see* Cynthia Lee Starnes, *I'll Be Watching You: Alimony and the Cohabitation Rule*, 50 Fam. L.Q. 261, 270 (2016)(discussing modification and termination of alimony in conjunction with cohabitation).

[18] *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 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* note 16, 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).

Child support obligations may not be affected by a claim under UCERA.

The spouse of a cohabitant represents a special kind of third party. Any transfer of property by a married cohabitant to the other cohabitant necessarily reduces the pool of assets potentially available to the spouse of the married cohabitant. Section 8 sets forth five different approaches an enacting state might adopt when a cohabitant is married, ranging from protecting the spouse against any diminution of value to treating the spouse as simply one more creditor. The Comment to Section 8 discusses the differing approaches that allow a state to choose which is appropriate for its residents.

The remedies provided in this act may not be the only remedies available to cohabitants. Cohabitants may have claims against one another based on other state law that are not covered by UCERA, including, for example, tort claims and partnership claims. UCERA supplements and does not replace existing state law.

Because UCERA is enabling and underlying state law will, in most instances, adequately cover the adjudication of cohabitants' claims, very little procedural law is included. UCERA contemplates that both contractual and equitable claims by a cohabitant could be brought as a part of the same action, as would typically be the case with litigants of similar claims. UCERA does not include a definition of court, nor does UCERA prescribe the court in which claims between cohabitants may be heard. An enacting state may decide that claims between cohabitants should be heard in general civil or family court. Other state law in an enacting state will govern whether these claims between living cohabitants are treated as general equitable and contract claims between individuals who just happen to be cohabitants or as claims that are similar to those heard by family courts. Claims involving deceased cohabitants should be heard in the court that handles settlement of decedents' estates and handled as a claim against the decedent's estate, and there is no need to obtain a judgment in civil or family court first, unless otherwise required under state law.

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THE UNIFORM COHABITANTS' ECONOMIC REMEDIES ACT (2021)

-A Summary-

The Uniform Cohabitants' Economic Remedies Act provides a mechanism to address the division of cohabitants' property interests when the cohabitation ends. The act does not create any special status for cohabitants. The act enables cohabitants to exercise the usual rights of individual citizens of a state to contract with others and to bring equitable claims against others in appropriate circumstances by affirming the capacity of each cohabitant to contract with the other and to claim a contract or equitable remedy against the other. Such claims may proceed without regard to any intimate relationship that exists between the cohabitants and without subjecting them to hurdles that would not be imposed on litigants of similar claims. Significantly, the act recognizes the value of non-sexual services, activities, and efforts of a party to the relationship as a basis for contractual and equitable claims. The Act has no effect on marriage or state law governing marriage. Marriage is a formal legal status that provides spouses with rights and remedies unavailable to cohabitants under the act.

For purposes of the act, a "cohabitant" is defined as one member of a couple if the two individuals live together "as a couple" and are not married to each other. The term does not set a time limit as to how long the individuals must cohabit to meet the definition. Individuals who are minors and those who are too closely related to marry cannot be cohabitants. A cohabitant might be married to someone else. Living "as a couple" is an intentionally fact-specific and broad standard. A sexual element is not required. If individuals living together are "mere roommates," including them within the act does no harm; their claims and remedies will generally be identical whether under this act or other state law. On the other hand, had the act included an elaborate definition litigants would spend considerable time and money attempting to establish that they were (or were not) cohabitants within the definition. The point of the act is to ensure that the nature of the parties' relationship is not a bar to their ability to bring claims against one another.

The act recognizes that contractual and equitable claims can be based on the provision of non-sexual services, activities, and efforts by a party to the relationship. Courts have not always recognized the value of non-material contributions to the relationship, such domestic services, as an adequate basis for recovery, reasoning instead that they are part of the cohabiting relationship and are thus rendered gratuitously.

The act protects third parties. The interests of secured creditors of, and good faith purchasers from, a cohabitant, cannot be adversely affected by a remedy granted under the act. Child support obligations may not be affected by a claim under the act. The spouse of a cohabitant represents a special interest third party. Any transfer of property by a married cohabitant to the other cohabitant necessarily reduces the pool of assets potentially available to spouse of the married cohabitant. The Act offers states five different approaches to address the situation when

a cohabitant is married, ranging from protecting the spouse against any diminution of value to treating the spouse as simply one more creditor.

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

For further information about Uniform Cohabitants' Economic Remedies Act, please contact Legislative Counsel Libby Snyder at (312) 450-6619 or lsnyder@uniformlaws.org.

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WHY YOUR STATE SHOULD ADOPT THE UNIFORM COHABITANTS' ECONOMIC REMEDIES ACT (2021)

The Uniform Cohabitants' Economic Remedies Act enables cohabitants to exercise the usual rights of individual citizens of a state to contract and to successfully maintain contract and equitable claims against others in appropriate circumstances. The Act affirms the capacity of each cohabitant to contract with the other and to maintain claims with respect to "contributions to the relationship" without regard to any intimate relationship that exists between them and without subjecting them to hurdles that would not be imposed on litigants of similar claims. Some important reasons why your state should adopt this Act include:

- **The Act responds to an increasingly relevant issue in modern American life.** Data shows a significant rise in the number of nonmarital cohabitants in the United States over the past half-century. Cohabitants may share financial responsibilities during their cohabitation, or they may keep their finances separate. One cohabitant may move into a dwelling the other had acquired separately. They may acquire property together. Both may work, neither may work or one may work and the other might take care of the household. As cohabitation and its acceptance has changed over the years, so too have available claims and remedies at separation and death that derive from cohabitation.

- **The Act enhances predictability for cohabitants by providing states with a consistent approach to addressing claims when a cohabitation ends.** Today, a number of states recognize rights between nonmarital cohabitants, some states allow cohabitants to assert claims based on both express or implied contracts as well as equitable claims, some states have imposed writing requirements on cohabitants' agreements, and a few states refuse to accept domestic or household services as lawful consideration, reasoning that such services are inextricably intertwined with the sexual relationship and are typically provided without expectation of compensation when a couple shares a residence. There is thus no predictable result when cohabitants dissolve their relationship or when one cohabitant dies. This unpredictability is enhanced when cohabitants move from state-to-state. This Act provides much-needed statutory direction for courts and individuals.

- **The Act clears barriers for cohabitants to assert claims, without creating a special status for cohabitants.** The Act enables cohabitants to exercise the usual rights of individual citizens of a state to contract with others and to bring equitable claims against others in appropriate circumstances. The Act ensures that the nature of the relationship of the parties is not a bar to a successful claim.

- **The Act gives states flexibility and guidance to states in term of addressing claims involving a cohabitant that is married.** The Act offers states five different approaches to address the situation. Commentary to the Act discusses differing approaches in order to assist a state in choosing which is appropriate for its residents.

- **The Act has no effect on marriage or state law governing marriage.** Marriage is a formal legal status that provides spouses with rights and remedies unavailable to cohabitants under the act.

- **The Act is intended to supplement, not displace existing state law, in most instances.** The remedies provided in this Act are not the only remedies available to cohabitants. Cohabitants may have claims against one another based on other state law that are not covered by the Act, including, for example, tort claims and partnership claims.

For further information about Uniform Cohabitants' Economic Remedies Act, please contact Legislative Counsel Libby Snyder at (312) 450-6619 or lsnyder@uniformlaws.org.

CBA TRUST AND ESTATE SECTION
STATUTORY REVISIONS COMMITTEE
MINUTES – AUGUST 3, 2022

I. Welcome & Call to Order

A. Attendance & Introductions. Jonathan F. Haskell, Chair, called the meeting to order at 1:32pm.

B. Reminders

1. Please let Hayley Lambourn know if you did not receive meeting materials or if you would like to be removed from the email list. (hlambourn@wadeash.com)

C. Approval of Minutes: May 4, 2022 Meeting. Letty Maxfield moved to approve the minutes from the May 4, 2022 meeting. Herb Tucker seconded the motion, and the minutes were approved.

II. Chairperson's Report

III. Legislative Liaison Report

A. Tyler Mounsey provided the legislative report.

1. Tyler offered his time to speak with anyone regarding upcoming legislative session or any issues they are having. You can contact Tyler Mounsey at tmounsey@cobar.org or on his cell phone: 202-270-8607.

2. Senate Bill 22-201, Commission re Judicial Discipline. Two Reports have come out and highlighted need for judicial reform. The bill created 18 points for the commissioners to consider. The next meeting is 8/10/2022, which is the third meeting of the commission. 8/17/2022 is the fourth meeting. The last meeting will be in mid-September (no public testimony). At the last meeting, the commission will consider what legislation should be proposed as a result of the commission's review. No additional work needed by the section right now, maybe work in the future depending on whether or not legislation is proposed.

3. Tyler would like the subcommittee to consider adjusting its timeline to propose new legislation from September/October to August/September. Being ready to present ideas in an organized fashion earlier will help us to be successful in the upcoming session.

4. Question: Letty Maxfield asked if the schedule for Uniform Law Commission was set. Tyler Mounsey was not sure and does not know who from the general assembly will fill the vacant seat on the Commission. Tyler will work on these items and get back to the committee.

5. Question: What issues will be relevant to this section in the coming legislative session? Tyler needs to review what the Colorado Commission will take on this year. Voidable transactions may return.

a. Non-Testamentary, Electronic Estate Planning Documents. Tyler Mounsey will forward the materials to the committee, and Jonathan Haskell will circulate.

IV. Announcements

V. Subcommittee Reports

A. *ACTIVE MATTERS PENDING APPROVAL*

1. Amendment to C.R.S. § 15-12-203(4) (Personal Representative Priority Statute) (Chair: Gordon Williams). No Report.

2. Lodged Wills **(**Chair: Bette Heller)

a. This matter is coming before the committee after materials were previously provided in the spring of 2021. As a reminder, the objectives of the subcommittee are to ensure consistency among the courts re procedure for returning/destroying original (paper) Wills and clarify when attorneys and personal representatives may destroy/return original documents.

b. Issues: Some courts are destroying documents before the probate is closed. Some courts are giving the original documents to anyone.

c. The subcommittee proposes a new statute, C.R.S. § 15-10-305.5, to remedy the situation. Bette generally reviewed the provisions of the subcommittee's proposed statute.

d. In addition, the subcommittee recommends changes to C.R.S. § 15-12-304 and C.R.S. § 15-12-402 to conform to the proposed statute - specifically to require formal probate of the electronic copies of the destroyed/returned Wills, which the clerk has certified.

e. Letty Maxfield recommended including the additional provisions (para. 7 and 8) to require formal probate of these documents because of the notice provisions required to admit a Will to formal probate. She also noted that the timeline for appointment is as few as 14 days when the Petition is placed on the non appearance hearing docket. There was general agreement among other members of the committee.

f. Proposal: delete C.R.S. § 15-10-305(2) and approve proposed C.R.S. § 15-10-305.5, including paragraphs 7 and 8, as proposed by the subcommittee. Betty Heller makes a motion to approve. Letty Maxfield seconds the Motion. Rose Zapor abstains from the vote. The Motion passes.

g. Proposal: amend C.R.S. § 15-12-304 and C.R.S. § 15-12-402 to include electronic copies of destroyed/returned Wills certified by the court clerk as a Will and require formal probate.

(1) Discussion Letty Maxfield – Only tangible wills (those originally in paper format) are subject to C.R.S. § 15-12-304 and C.R.S. § 15-12-402. Do the proposed amendments consider this nuance?

(a) Bette Heller – The proposed amendments reference C.R.S. § 15-10-305.5 specifically.

(2) Bette Heller moves to approve the proposal. Letty Maxfield seconds the motion. Motion passes.

h. Bette Heller discussed with Tyler Mounsey issues with communicating with Connie Linde, specifically why the proposed legislation was needed. Ms. Heller also notes that Connie Linde has a new counterpart, Kayla Couley.

3. Beneficiary Deeds Statute Update (Chair: Carl Stevens). No Report.

4. Uniform Cohabitants Economic Remedies Act **(**Chair: Connie Eyster).

a. Letty Maxfield provided the report. The subcommittee has provided materials and intends to review them in depth with the committee in September. The subcommittee would appreciate if members would review the materials ahead of the September meeting in preparation for a potential vote. She also recommends that any questions be sent to her ahead of time, if possible.

b. This is a 2021 uniform law. Representative Snyder wanted to run the bill last year, but gave CBA the opportunity to review and recommend any technical amendments to the bill. Representative Snyder is motivated to run the bill this year.

c. Includes options to make it conform to existing Colorado probate law and other provisions to create statutory framework to resolve with property disputes among couple who live together, but are not married and are not in a sexual relationship(not intended to apply to caregivers, college roommates, etc.)

d. Ms. Maxfield also noted that the subcommittee tended to take the most conservative stance as to not give cohabitants special status, similar to a spouse. Ms. Maxfield noted the subcommittee reviewed the bill to determine if it was legally sound from a technical perspective. She does not anticipate time for discussion regarding whether it is appropriate from a public policy perspective.

5. Uniform Community Property Disposition at Death Act **(**Chair: Connie Eyster). Materials will be available for next month's meeting.

6. Colorado Uniform Electronic Wills Act. Conforming amendments to C.R.S. §§ 15-12-406 and 15-12-303 Informal Probate Findings.

a. C.R.S. §15-12-303(3) Lacks references to electronic Wills. The statute does contain language giving the Court discretion to admit electronic wills formally or informally. Because of the practical difference between various types of electronic wills, it seems appropriate to leave it to the discretion of the court.

b. C.R.S. § 15-11-503 – remove statutory contradiction. Technical fix is needed. Letty will reach out to Tyler Mounsey re a revisor's bill and report back in September.

c. C.R.S. §§ 15-11-506, 15-11-502, and 15-11-503 no specific reference to e-wills or self-proving wills. The broader language claws in the other types of execution types. No fix needed.

7. Review of C.R.S. § § 15-5-103 (10) and (16) [Definition of "interested person" and "qualified beneficiary"] (Chair: Spencer Crona)

a. Subcommitee has been formed. Need standing for prior beneficiaries. Concern about how broad the scope and the length of the duration May have language for consideration by the committee in September.

B. *INACTIVE MATTERS*

1. Approved. No discussion.

2. Approved but not moving forward

a. Colorado Electronic Preservation of Abandoned Estate Planning Documents Act. (Chair: Pete Bullard). Continue to hold until the Colorado judiciary gets procedures up and running. Will come up in 2023.

3. Unapproved

a. Child Support in Probate (Chair: Pat Mellen). No Report.

VI. Section Reports

A. Elder Law. Rose Zapor gave the report. Last session and through the summer the Elder Law Section considered a guardian's ability to restrict or terminate visitation or communication with a ward. There has been a proposal to amend C.R.S. § 15-14-316 adding a provision prohibiting guardians from restricting family members/visitors from visiting, calling, contacting, ect. unless the guardian is authorized by the court by specific order, an order of protection, or the guardian has good cause to do so. Changes were also recommended to C.R.S. § 15-14-311, adding notice to the ward/visitors regarding restrictions. There is also an associated proposed JDF form for notice and right to a hearing regarding the restrictions. Rose will forward the proposals to the committee.

B. Other

VII. New Matters

A. Rose Zapor. House Bill 12-87 restricting rent increases in mobile homes. There is a company, Mobile Home University, advising purchase of mobile home parks and increasing rent. The bill partially passed, excluding the rent provisions. The bill will likely come around again. Ms. Zapor recommended that SRC may want to consider taking a position on the bill.

The meeting adjourned at 2:55pm.

Respectfully Submitted, Hayley M. Lambourn.