

Comment, Illicit Relationships, or Life Planning Without Marriage? Cohabitation Agreement Enforcement Throughout the United States

Introduction

The use of prenuptial agreements has been common in American society for decades.¹ Most states have clear requirements for the enforcement of prenuptial agreements for both the lawyers who draft the agreements and the courts that evaluate them.² Cohabitation agreements have seen an emergence in recent years both in use and recognition³ as fewer couples choose to get married,⁴ but still choose to cohabit together. The Uniform Law Commission now recognizes cohabitation⁵ and includes it in a uniform law that guides prospective statutes in many states.⁶

For partners with significant assets, or those who just want to know where they stand with the person with whom they are living, a cohabitation agreement can be used to define the scope of the relationship. In section one, this Comment will discuss the

¹ See Jaquelin Valoz, *From Love to Law: The Evolution of Prenuptial Agreements Through History*, 37 J. AM. ACAD. MATRIM. LAW. 707, 707 (2025).

² See *id.*

³ See ROBERT H. SITKOFF & JESSE DUKEMINIER, WILLS, TRUSTS, AND ESTATES 77 (2022); see generally UNIF. COHABITANTS' REMEDIES ACT (UNIF. L. COMM'N 2021).

⁴ See *How Has Marriage in the US Changed over Time?*, USA FACTS (Feb. 11, 2025), <https://usafacts.org/articles/state-relationships-marriages-and-living-alone-us/>.

⁵ For purposes of this comment, "cohabitation" refers to unmarried persons living together in some form of romantic relationship, without regard to sexual orientation. See UNIF. COHABITANTS' ECON. REMEDIES ACT § 2(1) ("Cohabitant" means each of two individuals not married to each other who live together as a couple after each has reached the age of majority or been emancipated. The term does not include individuals who are too closely related to marry each other legally.").

⁶ See SITKOFF & DUKEMINIER, *supra* note 3 at 78-79; see generally UNIF. COHABITANTS' ECON. REMEDIES ACT.

historical developments leading to cohabitation agreements, and how most states honor cohabitant rights in the absence of a written agreement. In section two, the Comment will discuss the standards for enforcing these agreements, and variations between states with different political majorities in their respective legislatures.

I. Development of Cohabitant Rights Absent Agreements

The first court to examine the real effect on a person's property as a result of cohabitating outside of marriage occurred in 1976 in California in *Marvin v. Marvin*.⁷ One of the most significant takeaways from *Marvin*⁸ is the idea that equitable relief may be available for cohabitating couples without an agreement, and agreements are available to unmarried, cohabitating couples who want to dictate transfer (or not) of their property. While possibly surprising today, *Marvin* represented a landmark decision regarding the rights of unmarried, cohabitating partners that considered factors outside of the "immorality" of cohabitating without marriage.⁹

Both cohabitation outside of marriage and prenuptial agreements have historically been taboo in society for different reasons.¹⁰ The antiquated views toward cohabitation largely formed

⁷ Anna Sporek & Margaret Ryznar, *The Consequences of Cohabitation*, 50 U.S.F. L. REV. 75, 75 (2016) ("Since the first American case recognizing the property consequences of cohabitation in California in 1976"); *see generally* *Marvin v. Marvin*, 557 P.2d 106 (Cal. 1976) (discussing property division outside of marriage when the couple is cohabitating).

⁸ *Marvin*, 557 P.2d 106.

⁹ *Id.* at 114-15 (discussing consequences of only examining the sexual relationship between cohabitating individuals, e.g., invalidating all private contracts because of a possible sexual relationship outside of marriage).

¹⁰ Allie Volpe, *Why Couples Are Choosing Cohabitation over Marriage*, Vox (Apr. 21, 2024 7:00 AM), <https://www.vox.com/even-better/24127335/living-together-cohabitation-before-marriage-relationship-milestones> ("Once considered taboo due to the mere suggestion that a couple was having premarital sex, cohabitation before marriage is now the norm."); *See generally* Lynsey Romo & Matt Shipman, *Want To Talk About Prenups? Describe Them as Something Else*, NC STATE UNIV. NEWS (Jun. 2, 2021), <https://news.ncsu.edu/2021/06/talking-about-prenups/> (discussing how prenups are largely so taboo that people do not even want to hear the word "prenup").

the basis for enforcement of cohabitant rights prior to *Marvin*.¹¹ Since society has evolved toward greater acceptance of cohabitation, including the cohabitation of same-sex couples outside of marriage, courts in states around the country began adopting the framework set out in *Marvin*, and continued to move forward with different variations on enforcing rights arising from the relationship.¹²

Within three years after *Marvin*, other states began recognizing the validity of cohabitation in pursuit of enforcing other claims, such as spousal support.¹³ While courts began to recognize and enforce cohabitation rights fairly soon after *Marvin*, legislatures were much slower, including the states in which their courts were already examining the issue.¹⁴ California courts continued to enforce cohabitation rights years after *Marvin*, and California was also instrumental in establishing these contractual rights for same-sex couples.¹⁵ Other courts around the country followed suit for the general enforcement of cohabitation agreements for both heterosexual and same-sex couples,

¹¹ See generally *Marvin*, 557 P.2d at 114 (discussing previous courts' views of immorality inherent in cohabitating couples' relationships).

¹² See, e.g., *Glasgo v. Glasgo*, 410 N.E.2d 1325, 1327 (Ind. Ct. App. 1980) (applying *Marvin* analysis, noting *Marvin* as a "landmark" decision, and noting other cases applying the *Marvin* standard); *Boland v. Catalano*, 521 A.2d 142, 145 (Conn. 1987) (discussing the antiquated views of cohabitation refuted in *Marvin*: "To equate the nonmarital relationship of today to such a subject matter is to do violence to an accepted and wholly different practice."); *Hudson v. DeLonjay*, 732 S.W.2d 922, 926 (Mo. Ct. App. 1987) (applying *Marvin* analysis to the conduct of the parties during cohabitation and whether such a relationship gives rise to an implied contract).

¹³ Spousal support is also commonly referred to as maintenance. See Alexis M. Zimmer, *Spousal Maintenance and Cohabitation: Minnesota Should Shack Up with a Need-Based Approach*, 50 MITCHELL HAMLINE L. REV. 810, 811 (2024) ("The Minnesota Supreme Court discussed cohabitation as a potential ground for modification in 1979, but the Minnesota Legislature did not enact the cohabitation amendment until thirty-seven years later, in 2016").

¹⁴ *Id.*

¹⁵ Susan J. Becker, *The Evolution Toward Judicial Independence in the Continuing Quest for LGBT Equality*, 64 CASE W. RES. 863, 903 (2014) ("Seven years later, another California court of appeal rejected the Jones Court's view that homosexual partners who entered a cohabitation agreement were bargaining primarily for sexual services.").

with some caveats that will be discussed later.¹⁶ Culminating in the Supreme Court's landmark decision in *Obergefell v. Hodges*, same-sex couples—who before *Obergefell* could only be cohabitants in many states—were now elevated to a status of potential marriage.¹⁷ Many of the dilemmas about immorality that courts grappled with before *Marvin* in relation to cohabitation have shifted to antiquated status.¹⁸ Even after same-sex marriage rights were established in *Obergefell*, the desire for cohabitation in lieu of marriage still remained.¹⁹

A. *Cohabitation Rights Recognition Without Agreement and the Uniform Cohabitants' Economic Remedies Act*

The drafting process of the landmark Uniform Cohabitants' Economic Remedies Act (UCERA) included an extensive process which considered several bases for determining what the rights and remedies of cohabitating persons should be.²⁰ After several

¹⁶ Essentially, it took even more progressive jurisdictions awhile to recognize more cohabitant rights. *See, e.g.*, MASSACHUSETTS FAMILY LAW § 12.13[1] (2025) (“Cohabitation agreements were first expressly recognized in Massachusetts in [1998].”); *Wilcox v. Trautz*, 693 N.E.2d 141 (Mass. 1998).

¹⁷ *See generally* *Obergefell v. Hodges*, 576 U.S. 644 (2015) (granting same-sex couples the right to marry under the Fourteenth Amendment); *see also* UNIF. COHABITANTS' ECON. REMEDIES ACT § 2(1) (implying the potential to marry regardless of sexual orientation).

¹⁸ Courts routinely refused to grant same-sex couples, or cohabitating couples in general any remedies due to views of cohabitation as “immoral” and centered around a sexual relationship. *See Marvin*, 557 P.2d at 114-15 (noting that the “immoral” nature of cohabitation in general, including same-sex relationships was a subject that courts frequently grappled with in enforcing cohabitant rights without an agreement).

¹⁹ *See* Alice G. Walton, *The Marriage Problem: Why Many Are Choosing Cohabitation Instead*, ATLANTIC (Feb. 7, 2012), <https://www.theatlantic.com/health/archive/2012/02/the-marriage-problem-why-many-are-choosing-cohabitation-instead/252505/> (analyzing trends on non-marital cohabitation versus marital cohabitation prior to *Obergefell*); Volpe, *supra* note 10 (discussing trends and reasons for non-marital cohabitation post *Obergefell*). A complete history on cohabitation agreements is outside the scope of this comment, but further reading on this history is widely available. *See, e.g.*, William H. Danne, Jr., *Palimony Actions for Support Following Termination of Nonmarital Relationships*, 21 A.L.R. 6TH 351 (2007).

²⁰ *See* Laura W. Morgan, *The Uniform Cohabitants' Economic Remedies Act* (2021), 36 J. AM. ACAD. MATRIM. LAW. 129, 133 (2023) (“The drafting process exposed the basic underlying conceptual problem for any law that seeks to define

drafts, The National Conference of Commissioners on Uniform State Law ultimately completed the UCERA in 2021.²¹ For the first time, a uniform state law introduced specific uniform provisions for cohabitating couples.²² Among definitions for what a “cohabitant” is, the Act notably included familiar practices—albeit not yet codified in many jurisdictions—and addressed those practices with advanced clarity not previously available.²³ Additionally, the Act gives states the ability to choose between different options more suitable to their jurisdictions regarding third-party claims, e.g., an absent spouse failing to provide support or maintenance.²⁴ Ultimately, the UCERA grants no special rights to unmarried cohabitating persons, but instead simply creates rules to allow these persons to exercise the standard rights that people would normally have to contract with others.²⁵ Although a uniform guide exists today—but because its presence is relatively new—the courts in the United States, rather than legislatures, largely determine the rights

the rights and remedies of cohabitants when the relationship is terminated: was the act to be based solely on contract and equity, an act with an opt-in menu of alternative benefits and obligations, or an act that included a status-based remedy?”).

²¹ See Morgan, *supra* note 20, at 133; UNIF. COHABITANTS’ ECON. REMEDIES ACT.

²² The act addressed already established common practices, discussed further *infra* in text at notes 28-32, which include equitable remedies for cohabitants largely based on the conduct of the parties even absent explicit agreements. See UNIF. COHABITANTS’ ECON. REMEDIES ACT.

²³ Morgan, *supra* note 20, at 137 (“UCERA provides familiar remedies but with greater clarity than now exists . . . UCERA provides a much needed firm, structural framework for cohabitants’ contractual and equitable claims.”).

²⁴ This example simply serves to illustrate the recognition of cohabitation as commonplace at the time the UCERA was drafted, as opposed to views on cohabitation prior to *Marvin*. See generally *Marvin*, 557 P.2d at 114-15; see also Morgan, *supra* note 20, at 137 (“Under Section 8, states may select from five options regarding the impact of a judgment obtained by a cohabitant on a third party, including an absent spouse.”). These five options cover how different states might treat debtor creditor rights following awards for cohabitants, and are discussed in further detail in section 8 of the UCERA, as well as the comments following section 8. See UNIF. COHABITANTS’ ECON. REMEDIES ACT § 8.

²⁵ Barbara Atwood & Naomi Cahn, *Nonmarital Cohabitants: The US Approach*, 44 Hous. J. INT’L L. 191, 214-15 (2022) (“A norm underlying the Act is that cohabitants should be able to assert contractual and equitable claims against one another in the same manner as other litigants.”).

and remedies of cohabitants.²⁶ While a few states have attempted to expressly adopt the UCERA, no state has as of this writing.²⁷

B. *The UCERA and Cohabitant Rights Absent Express Agreements*

In the event no cohabitation agreement exists between parties, and a cohabitant desires to pursue a claim for property division or other related rights, many states will follow equitable principles inherent in disputes not involving cohabitation.²⁸ A calculation for maintenance in the event of divorce, for example, could even attempt to rely on a period prior to a marriage when parties cohabitated and one party relied on the other party's contributions to the relationship during that period of cohabitation.²⁹ The UCERA contemplates this exact situation in establishing rights for cohabitants without an agreement.³⁰ While not expressly adopted in legislation, many states permit some form of equitable remedy to address cohabitation absent an agreement, similar to section four of the UCERA.³¹ In other words, states without expressly codified

²⁶ *Id.* at 216 (“No state legislature to date, however, has established a regime for cohabitants’ economic rights. We are left primarily with judge-made law that is often difficult for nonlawyers to access or to fully understand.”).

²⁷ *See, e.g.*, H.B. 4404, 103rd Gen. Assemb., (Ill. 2023); H.B. 273, 56th Leg., 1st Reg. Sess. (N.M. 2023).

²⁸ *See, e.g.*, KAN. STAT. ANN. § 23-2802(c)(10) (2025) (“In making the division of property the court shall consider . . . (10) such other factors as the court considers necessary to make a just and reasonable division of property.”).

²⁹ *See In re Marriage of Marcus*, No. 111,811, 2015 Kan. App. LEXIS 451, at *4 (Kan. Ct. App. Jun. 5, 2015) (“One exhibit calculated maintenance including the time period that [wife] and [husband] cohabitated with one another . . . [wife] sought to base her maintenance upon the worksheet which included the period of cohabitation.”).

³⁰ *See* UNIF. COHABITANTS’ ECON. REMEDIES ACT § 4(a)(3) (“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 . . . extinguished by the marriage of the cohabitants to each other.”).

³¹ *See, e.g.*, 5 TEX. FAM. L. PRAC. & PROC. W1.01 [1] (“The Family Code is silent on cohabitation agreements, except to say that a “nonmarital conjugal cohabitation” agreement is not enforceable unless it is in writing”); *In re Eriksen*, 337 N.W.2d 671, 672 (Minn. 1983) (discussing constructive trust remedies for cohabitating parties absent an agreement: “The parties never signed an agreement detailing their financial arrangements regarding the property.”); *Carol v.*

cohabitation agreement provisions generally allow for equitable claims rooted in contract law.³²

II. Cohabitation Agreement Enforcement

The primary focus of this comment is to discuss the manner in which courts in the United States do—or do not—enforce provisions of cohabitant agreements when a valid agreement exists between the cohabitants. A brief history of the rights of cohabitants both in general and without an agreement—as discussed above—is necessary to understand the scope of the issues explored here. Sections of the UCERA expressly address cohabitation agreements, even addressing possible conflicts of established law in the states that choose to adopt it.³³ Nonetheless, at the time of this writing, no states have expressly adopted provisions of the UCERA to specifically address cohabitation agreements.³⁴

A. UCERA's Cohabitation Provisions

The UCERA itself indicates the desire to “provide[] a mechanism address the division of cohabitants’ property interests when the cohabitation ends.”³⁵ The UCERA’s Prefatory Note describes in additional detail some of the steps states have taken outside the bounds of the UCERA to apply equitable remedies to cohabitation situations.³⁶ Crucial to the UCERA is the provision in Section 4, which states:

Lee, 712 P.2d 923, 927 (Ariz. 1986) (discussing availability of an implied agreement absent an actual written or oral agreement).

³² For example: promissory estoppel, implied contract, unjust enrichment, etc. *See, e.g.*, *Hernandez -Jarquin v. Nieves Salazar*, 255 N.E.3d 452, 465 (Ind. Ct. App. 2025) (“A person “who cohabitates with another without subsequent marriage is entitled to relief upon a showing of an express contract or a viable equitable theory such as an implied contract or unjust enrichment.”); *Salzman v. Bachrach*, 996 P.2d 1263, 1265 (Colo. 2000) (applying unjust enrichment theory to situation in which cohabitation was the crucial issue).

³³ *See generally* UNIF. COHABITANTS’ ECON. REMEDIES ACT §§ 5, 6 (2021) (addressing conflicts of law in section 5, and the cohabitation agreement specifically in section 6).

³⁴ *Atwood & Cahn, supra* note 25, at 216.

³⁵ UNIF. COHABITANTS’ ECON. REMEDIES ACT prefatory note (2021).

³⁶ *Id.* prefatory note at 3 (“Some states allow cohabitants to assert claims based on both express or implied contracts as well as equitable claims”).

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 requirement because the parties to the action are or were cohabitants or because of a sexual relationship between the cohabitants.³⁷

This provision is crucial to both the UCERA and the states that might choose to implement it specifically because of the presumption—in some states—that sexual relationships form invalid consideration for a cohabitation agreement.³⁸ Sections 6 and 7 of the UCERA are further important for cohabitants, because these sections describe what a cohabitation agreement *could* be,³⁹ as well as the equitable relief available if for some reason cohabitants do not meet the broad requirements of an agreement under the UCERA.⁴⁰ Understanding how different states with different political ideations is important in understanding the need for the UCERA and the specific provisions highlighted above.

B. *Cohabitation Agreement Enforcement in States with Liberal Majority Legislatures*

California, which was at the forefront of recognizing cohabitation rights under the *Marvin* decision, has a more comprehensive body of law for enforcing cohabitation agreements than do other states.⁴¹ After *Marvin*, and demonstrated in *Bergen v. Wood* in 1993, California courts looked principally at cohabitation as being a prerequisite for enforcement of an express cohabitation agreement.⁴² But more recently than *Bergen*, in *Cochran v. Cochran* in

³⁷ *Id.* § 4(a)(1)-(2).

³⁸ *See infra* note 64.

³⁹ UNIF. COHABITANTS' ECON. REMEDIES ACT § 6.

⁴⁰ The broad requirements of an agreement under the UCERA largely refer to the ease with which parties are able to meet the requirements of a cohabitation agreement under the act, even when an express agreement may not exist. *See id.* § 7.

⁴¹ *See generally* 1 CAL. L. PRAC. & PROC. 2D § 2.03 (outlining developments in California cohabitation rights recognition).

⁴² *See id.*; *see generally* *Bergen v. Wood*, 18 Cal. Rptr. 2d 75 (Cal. Ct. App. 1993) (finding that since the parties never lived together, essentially the only possible contract consideration was the parties' sexual relationship, which could not be grounds alone for proper consideration).

2001, California courts upheld the idea that “living together” is not an absolute prerequisite for recovery.⁴³

In *Cochran*, the California Court of Appeals utilized several factors to analyze the relationship of the parties to determine whether enforcement was warranted based on the parties’ relationship.⁴⁴ Specifically, the *Cochran* court relied on precedent dictating that agreements resting on sexual relationships alone as consideration were invalid, and examined the full extent of the relationship between the parties.⁴⁵ Even in the jurisdiction that coined the cohabitation agreement situation as a “*Marvin*” one,⁴⁶ no statutory scheme has adopted the UCERA or specific standard other than general contract law.⁴⁷ Thus, enforcement of cohabitation agreements in California is still a common law issue.

Minnesota expressly recognizes cohabitation agreements, and is one of a few states separating a sexual relationship from being automatically intertwined in a cohabitation agreement.⁴⁸ Minnesota’s law has expressly defined rights under cohabitation agreements while toeing the line between consideration on immoral grounds only.⁴⁹ These statutes were enacted after the California Supreme Court’s decision in *Marvin*.⁵⁰ For example, the Minnesota Supreme Court in *In re Estate of Eriksen* found that although the parties did

⁴³ *Cochran v. Cochran*, 106 Cal. Rptr 2d 899, 906 (Cal. Ct. App. 2001).

⁴⁴ *See generally id.*

⁴⁵ *Id.* at 904-05 (“Here, the parties had shared a long-term, stable and significant relationship. In this context, evidence that they lived together two to four days a week both before and at the time they entered their *Marvin* agreement is sufficient to raise a triable issue of fact that they cohabitated under *Marvin*.”).

⁴⁶ *Id.* at 905 (“they entered their *Marvin* agreement”).

⁴⁷ *Cochran*, 106 Cal. Rptr. 2d at 904-05.

⁴⁸ *See Eriksen*, 337 N.W.2d at 673 (discussing Minnesota’s statutes regarding cohabitation agreements); MINN. STAT. § 513.075 (2025) (requiring a cohabitation agreement to be in writing, and further, requiring that when enforcement is sought following the termination of the relationship, there must have been an enforceable cohabitation agreement when the sexual relationship was first contemplated).

⁴⁹ *See* MINN. STAT. § 513.076 (2025) (“Unless the individuals have executed a contract complying with the provisions of section 513.075, the courts of this state are without jurisdiction to hear and shall dismiss as contrary to public policy any claim by an individual to the earnings or property of another individual if the claim is based on the fact that the individuals lived together in contemplation of sexual relations and out of wedlock within or without this state.”).

⁵⁰ *Eriksen*, 337 N.W.2d at 673.

not have an express written agreement, and only an oral one, their conduct led to the presumption that the cohabitating partners' agreement was not based *solely* on a sexual relationship.⁵¹ While acknowledging that cohabitation is often associated with a sexual relationship, the Minnesota Supreme Court held that any implied sexual relationship was merely incidental and not central to the parties' agreement.⁵² Ironically, in similar fashion to *Weekes v. Gay*⁵³ in Georgia,⁵⁴ discussed later, the Minnesota Supreme Court in *Eriksen* found a constructive trust was created because of one partner's contributions to the payment and maintenance of the home they cohabitated in together.⁵⁵

Massachusetts began expressly recognizing enforcement of cohabitation agreements after its Supreme Court's decision in *Wilcox v. Trautz*.⁵⁶ *Wilcox* is unique, being one of the few decisions in the United States deciding the merits of a valid, written, and signed cohabitation agreement.⁵⁷ Further, the cohabitation agreement in *Wilcox* was not entered into at the beginning of the cohabitation relationship, but instead, drafted and agreed to when one party to the relationship realized it was likely to come to an end.⁵⁸ In a more progressive manner, the Supreme Court of Massachusetts

⁵¹ *Id.* at 673-74.

⁵² *Id.* at 674 ("Although they lived together 'out of wedlock' and 'in contemplation of sexual relations,' their sexual relationship did not provide the sole consideration for the agreement.").

⁵³ *Weekes v. Gay*, 256 S.E.2d 901, 903 (Ga. 1979).

⁵⁴ Georgia is a more conservative leaning jurisdiction based on legislative composition. See *Georgia General Assembly*, WIKIPEDIA (last visited Nov. 19, 2025), https://en.wikipedia.org/wiki/Georgia_General_Assembly.

⁵⁵ *Eriksen*, 337 N.W.2d at 674.

⁵⁶ Andrea D. Heinbach & Pierce J. Reed, *Wilcox v. Trautz: The Recognition of Relationship Contracts in Massachusetts*, 43 B.B.J. 6, 6 (Dec. 1999) ("In *Wilcox v. Trautz*, the Supreme Judicial Court of Massachusetts ("SJC") expressly recognized, for the first time, the validity of a written agreement between two unmarried cohabitants which attempts to define the rights of the parties as to their finances and property."); see also *Wilcox v. Trautz*, 693 N.E.2d 141 (Mass. 1998).

⁵⁷ Many cohabitation agreements referenced in court decisions are oral agreements, with enforcement sought at the time of separation. Heinbach & Reed, *supra* note 56, at 6.

⁵⁸ See *id.* at 17 ("In March 1989, after learning that *Wilcox* had become involved in another relationship, *Trautz* sought legal advice regarding the parties' rights to the assets. His attorney then drafted an agreement regarding the parties' respective rights).

addressed the previous presumption of illicitness or immorality that was once tied to cohabitation.⁵⁹ But like Minnesota, the court found that the conduct of the parties, and most notably, the express written agreement they entered into with proper consideration—not based on a sexual relationship alone—constituted a valid, enforceable agreement.⁶⁰

C. *Cohabitation Agreement Enforcement in States with Conservative Majority Legislatures*

In Texas, the only statutory provisions that do exist are limited to restricting the economic rights of cohabitants, rather than explicitly defining them.⁶¹ Statutes addressing cohabitation at all in Texas reference its restriction.⁶² Not only does no Texas statute exist to govern cohabitation agreements, no Texas appellate court has decided on enforcement of cohabitation agreements according to any recognized standard.⁶³ While cohabitating couples in Texas may be labeled as engaging in a “meretricious relationship,” no meaning is actually afforded to the label, and instead the term is one of convenience in referring to the unmarried couple.⁶⁴ Cohabitating couples in Texas are generally afforded the same rights as cohabitating couples were before *Marvin*, with only older

⁵⁹ See *id.* at 18 (“In reversing the Probate Court’s decision and holding that the agreement should be enforced, the SJC recognized the dramatic changes in social mores from earlier this century, when the court had found that similar agreements were largely unenforceable.”).

⁶⁰ *Id.*; *Wilcox*, 693 N.E.2d at 147 (“We conclude that the plaintiff and the defendant were free to contract with respect to property, financial, and other matters relevant to their relationship.”).

⁶¹ See TEX. FAM. CODE ANN. § 8.061 (“An order for maintenance is not authorized between unmarried cohabitants under any circumstances.”).

⁶² See *id.* (“An order for maintenance is not authorized between unmarried cohabitants under any circumstances.”).

⁶³ 5 TEX. FAM. L. PRAC. & PROC. W1.01 (“The validity of cohabitation agreements has not been confirmed by any Texas appellate court. The Family Code is silent on cohabitation agreements”).

⁶⁴ The term was used in some decisions involving common law marriages as a form of cohabitation in Texas, citing the “meretricious relationship” as a form of cohabitation involving a sexual relationship as the center of the relationship and therefore concluding that such an arrangement “did not rise to the dignity and sanctity of a marriage.” *Cornell v. Mabe*, 206 F.2d 514, 517 (5th Cir. 1953); see also *id.*

cases construing Texas law as deciding benefits based on their sexual relationship and morality.⁶⁵

Texas law's closest standard for enforceability of cohabitation agreements rests on the standard for enforcement of any other contract.⁶⁶ Prenuptial agreements and standards for enforcement are well established in Texas law, careful to refer only to "spouses" and "prospective spouses" in allowing such agreements.⁶⁷ Texas is one of many states that follow the Uniform Premarital Agreement Act (UPAA).⁶⁸ The UPAA was drafted in 1983,⁶⁹ likely carrying many of the undertones rejecting the idea of cohabitation. Provisions of the UPAA differ from those in the UCERA in that the UPAA is specifically designed to govern agreements made in the contemplation of marriage.⁷⁰ Texas took until 1997 to adopt the UPAA for itself, and the definitions contained in its provisions have not been amended since.⁷¹ Twenty-eight states and the District of Columbia have adopted provisions of the former UPAA (now UPMAA) for use, but no states have adopted the UCERA.⁷²

While courts in Texas and California, for example, obviously differ in their examinations of cohabitation and the agreements

⁶⁵ 5 TEX. FAM. L. PRAC. & PROC. W1.01.

⁶⁶ See *id.* at [1] ("The Family Code is silent on cohabitation agreements, except to say that a "nonmarital conjugal cohabitation" agreement is not enforceable unless it is in writing"); see also TEX. FAM. CODE ANN. §§ 1.108, 4.001 (limiting premarital agreements to "prospective spouses" only with no contemplation of cohabitation).

⁶⁷ This distinction is important, because cohabitants who have already planned to marry, and do marry are expressly afforded no recognition of any period of cohabitation, regardless of contribution to the relationship. TEX. FAM. CODE ANN. § 4.001(1) ("Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective on marriage.").

⁶⁸ 5 TEX. FAM. L. PRAC. & PROC. W1.01.

⁶⁹ Amberlynn Curry, *The Uniform Premarital Agreement Act and Its Variations Throughout the States*, 23 J. AM. ACAD. MATRIM. LAW. 355, 355 (2010); see also UNIF. PREMARITAL & MARITAL AGREEMENT ACT (2012).

⁷⁰ Curry, *supra* note 69, at 355.

⁷¹ TEX. FAM. CODE ANN. § 4.001(1).

⁷² See Barbara Ann Atwood & Naomi R Cahn, *The Uniform Cohabitants' Economic Remedies Act: Codifying and Strengthening Contract and Equity for Nonmarital Partners*, AM. BAR ASS'N (Feb. 29, 2024), https://www.americanbar.org/groups/family_law/resources/family-law-quarterly/2024-march/uniform-cohabitants-economic-remedies-act/ (discussing states adopting general contract provisions in lieu of explicit code provisions relating to cohabitation agreements).

that may or may not stem from it, these two states have more in common than it seems. Both California and Texas—whom many might consider to be at opposite ends of the political spectrum⁷³—are both community property states in terms of dividing property at divorce.⁷⁴

In the southeast United States, past views of cohabitation and the “immoral” nature surrounding a cohabitation agreement still linger, with a few states more sympathetic than others to cohabitation agreements. In Florida, so long as sexual relations are not the center of the contract, an agreement between cohabitants is largely enforced in the same manner as any other valid contract in the state.⁷⁵ In *Posik v. Layton*, the Florida Court of Appeals specifically held that an agreement for “support between unmarried adults” is valid, so long as a sexual relationship did not form the basis of consideration for the agreement.⁷⁶ Even if sexual consideration is absent from an agreement, courts will still examine whether implied language of the contract, or the conduct of the parties tended to show that the primary purpose of the contract—or the consideration that formed the contract—was premised on a sexual relationship.⁷⁷

⁷³ See *Texas Legislature*, WIKIPEDIA (last visited Nov. 19, 2025), https://en.wikipedia.org/wiki/Texas_Legislature; *California State Legislature*, WIKIPEDIA (last visited Nov. 19, 2025), https://en.wikipedia.org/wiki/California_State_Legislature.

⁷⁴ Also known as “50/50 states,” nine states use the community property system: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Tim Parker, *Community Property States*, INVESTOPEDIA (Sep. 12, 2025), <https://www.investopedia.com/personal-finance/which-states-are-community-property-states/>. Also mentioned are registered domestic partnerships in California, Nevada, and Washington that are subject to community property distribution. *Id.* This Comment is only referring to cohabitation, and not common law marriages or registered domestic partnerships. See *supra* note 5.

⁷⁵ See 18 SE. TRANSACTION GUIDE § 346.41 (“An express contract is enforceable regardless of the fact that the parties may be cohabiting illicitly as long as it is clear there was valid, lawful consideration separate and apart from any express or implied agreement regarding sexual relations.”).

⁷⁶ *Posik v. Layton*, 695 So. 2d 759, 762 (Fla. Dist. Ct. App. 1997).

⁷⁷ *Id.* (“[The absence of a sexual relationship provision] would not be decisive, however, if it could be determined from the contract or from the conduct of the parties that the primary reason for the agreement was to deliver and be paid for sexual services. See *Bergen v. Wood*, 14 Cal. App. 4th 854, 18 Cal. Rptr. 2d 75 (Cal. 1993).”).

At first glance, Georgia law appears to adopt a rationale for enforcing cohabitation agreements that is comparable to Florida's approach.⁷⁸ However, courts in Georgia still largely construe a cohabitation agreement to be helplessly intertwined with an "illicit" consideration involving a sexual relationship.⁷⁹ In *Liles v. Still*, the Georgia Court of Appeals refused to enforce an otherwise valid oral cohabitation agreement to share living expenses and rent due to the "meretricious relationship" of the parties.⁸⁰ While Georgia courts have not ruled on the circumstances surrounding an express written cohabitation agreement, there seems to be precedent for considering the conduct of the parties to determine whether an implied agreement exists, regardless of how intertwined an "illicit relationship" might be to the claim. In *Weekes v. Gay*, for example, the Georgia Supreme Court held that a contribution from a same-sex partner during cohabitation entitled him to relief after the cohabitant's death.⁸¹

Alabama seems to construe cohabitation agreements as somewhat of a hybrid of Florida and Georgia. Alabama considers both the illicit nature of forming an agreement with consideration being tied to a sexual relationship, but also the *future* likelihood of illicit consideration as the conduct of the parties continues during cohabitation.⁸² In other words, Alabama courts will look to the genesis of the agreement to decide, even if valid at the outset, whether an illicit relationship and consideration came to be after

⁷⁸ See GA. CODE ANN. § 13-8-1 (2025); but see *Glass v. Childs*, 71 S.E. 920, 921 (Ga. Ct. App. 1911) ("the law will not lend its aid to secure for either party an advantage to which he might be entitled under a contract which is abhorrent to sound public policy and good morals.").

⁷⁹ See 18 SE. TRANSACTION GUIDE § 346.41 ("the courts seem to be unable or unwilling to separate the illicit sexual relations from any other valid consideration.").

⁸⁰ *Liles v. Still*, 335 S.E.2d 168, 170 (Ga. Ct. App. 1985) (affirming a judgment following a jury verdict that since cohabitation formed the basis of the agreement, and a meretricious relationship took root from that agreement, it was an illicit or immoral contract and thus void).

⁸¹ See *Weekes*, 256 S.E.2d at 903 (holding that while the relationship might otherwise be illicit in nature, this was only collateral to the implied contract that was formed due to the cohabitants' contributions while the decedent was still alive).

⁸² See 18 SE. TRANSACTION GUIDE § 346.41 ("If illicit sexual relations to occur in the future are part of the consideration, express or implied, the contract will not be enforced at law or in equity.").

the fact.⁸³ In *Hall v. Hall*, the Alabama Supreme Court refused to enforce a support agreement between cohabitants because the agreement was based on the premise of the financial support the parties would receive from one another while cohabitating (an illicit relationship).⁸⁴

The problem within this sample of southeastern states is it is difficult for parties to enter into an agreement that expressly governs cohabitation because the states assume the immoral nature of cohabitation contaminates any agreement. Then these courts use the “illicit” basis of cohabitation to invalidate the original consideration. Therefore, in these states it seems not only unwise to form an agreement based on cohabitation, but unwise to call it a “cohabitation agreement” at all. This may be the reason why the case law referencing cohabitation agreements is so sparse in these states. It would be unwise for any lawyer to advise clients to name a cohabitation agreement what it is, and instead wiser to opt for a collateral agreement which could be shown not to be intertwined with a possible “immoral” cohabitation.

III. Conclusion

The rights of cohabitants differ from state to state. What seems to be consistent in most states is the standard contractual principle that no contract—including a cohabitation agreement—is enforceable when consideration rests *solely* on an illicit action such as the exchange of sexual services.⁸⁵ The variation lies in which states consider an illicit sexual relationship to be intertwined with cohabitation, or separated from it.⁸⁶ More progressive jurisdictions

⁸³ See generally *Hall v. Hall*, 455 So. 2d 813 (Ala. 1984) (refusing to enforce the oral cohabitant support agreement because the agreement was simply an executory contract of a root illicit cohabitation).

⁸⁴ *Hall*, 455 So. 2d at 815 (“Executory contracts based on the consideration of future illicit cohabitation are similarly unenforceable.”). Note also that the Alabama Supreme Court referenced the inconsistency of the immoral nature of cohabitation and “collusive divorce” referencing an Alabama statute prohibiting consensual divorce. *Id.*

⁸⁵ See, e.g., *id.*; *Liles*, 335 S.E.2d at 170; *Eriksen*, 337 N.W.2d at 673.

⁸⁶ As previously stated, every state realizes that consideration grounded solely in exchange of sexual services is void. The question is whether the sexual relationship implied in cohabitation is imputed to be the reason for consideration in an agreement. See, e.g., *Hall*, 455 So. 2d at 815 (refusing to enforce an

seemed to follow California's lead after *Marvin*, either enacting statutes formally recognizing cohabitation agreements, or electing to recognize the rights of parties when their conduct indicates they deserve relief.⁸⁷

Conservative states tend to either not have well developed case law about cohabitation or enact restrictive statutes,⁸⁸ or impute an implied sexual relationship to cohabitants as the basis of illicit consideration for an otherwise valid agreement.⁸⁹ Therefore, practitioners advising clients on cohabitation agreements must be cognizant of the manner in which cohabitation agreements may be construed by the jurisdiction they are in, regardless of if the agreement would otherwise be valid as a standard contract.

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oral cohabitant support agreement because the agreement was rooted in illicit cohabitation).

⁸⁷ See, e.g., MINN. STAT. § 513.075 (2025); *Wilcox*, 693 N.E.2d at 141; *Cochran*, 106 Cal. Rptr. 2d at 904-05.

⁸⁸ TEX. FAM. CODE ANN. § 8.061 ("An order for maintenance is not authorized between unmarried cohabitants under any circumstances.").

⁸⁹ See, e.g., *Hall*, 455 So. 2d at 815.