

## Domestic Partner Agreements

### What is it?

#### *Addresses the sharing of income, expenses, and property*

A domestic partner agreement can be used by all unmarried couples, whether of the opposite or same sex. It is a written contract between you and your partner that is primarily used to address the sharing of income, expenses, and property. It supports your ownership rights and clarifies your intentions for the distribution of your property if you die or your relationship ends. Although it needn't address concerns that are covered by other legal instruments (such as deeds of title, wills, living trusts, durable powers of attorney for health care and finances, parental rights documents, and living wills or Declarations of Desire), it can provide a valuable supporting document for them. You can also use a domestic partner agreement to identify responsibility for nonfinancial matters (e.g., who will handle household duties), although courts tend to provide only limited remedies for these so-called personal service agreements.

#### *Provides protection you otherwise lack*

Domestic partners are not recognized by the federal government. Many states also do not recognize domestic partners, and if you live in a state that does not, or if you live in a state that limits the rights of domestic partners, you won't automatically have the same rights, privileges, and protections that married couples have. A domestic partner agreement (sometimes called a living together agreement or a cohabitation agreement) may help outline how you and your partner intend to share your financial and legal obligations, and you may be required to provide one as proof that you are in a committed relationship (e.g., when applying for employer-provided domestic partner benefits). Domestic partner agreements are legal contracts, but they can take many forms and they are not legally binding in all states. It's important to work with an attorney in your state when drafting a domestic partner agreement.

#### *Sets clear ground rules up front*

By setting clear ground rules, a domestic partner agreement can help your relationship run more smoothly and ease the handling of disputes in case of separation or death. It can, however, be a delicate subject to broach with your partner.

### When can you use it?

You might wish to consider a domestic partner agreement if any of the following apply:

- You want to protect your income and property rights in case of separation or death
- You have more than a minimum of assets
- You expect to commingle your finances, perhaps by purchasing household goods or other property together, sharing income, or holding joint bank accounts or credit cards

- You want your relationship to run smoothly with a clear understanding of your financial rights and responsibilities

## What does it cover?

### *In general*

A domestic partner agreement primarily addresses the sharing of income, expenses, and property. You can also use it to support other legal documents, such as your will or the title to jointly owned property. Some couples use it to identify responsibility for various household duties, although courts tend to provide only limited remedies for so-called personal service agreements. The following questions and comments can guide you in identifying areas to address in a domestic partner agreement.

### *Shared income*

What rights, if any, do you and your partner have to each other's income now--and in the future--if you separate?

Although you enter a relationship with the sole right to your personal income, a spoken or implied agreement to share the income with your partner may permit him or her to assert a claim for support against you. Without a written understanding to the contrary, you can spend a lot of time and money contesting this in court. Your right to your partner's income is especially important to clarify if you depend on your partner's income (e.g., if you're a homemaker or the parent primarily responsible for child rearing).

### *Shared expenses*

How will you share household expenses--equally, according to income, or according to use? Will you share a joint bank account? If so, how much money will you keep in it, and what is it earmarked for? If you maintain separate bank accounts, what expenses will these cover? A candid discussion of your financial values, priorities, and goals will provide a solid foundation for planning your finances. Clarifying values, goals, and priorities now can ease your financial decision making and activities, including managing household expenses, deciding whether to open joint accounts, and developing a budget.

### *Shared property ownership*

How will you own property--separately or together? There are four categories of property to consider:

- Property you each individually bring into the relationship--Usually, this remains the property of the partner who originally owned it.
- Property you each individually receive during the relationship through gifts or inheritances--Generally, this remains the property of the partner who received it.
- Property without titles you acquire during the relationship, either separately or together--Possessions you purchase separately during the relationship are best kept separate, documenting your ownership with receipts in case the relationship ends. Property you acquire together is usually owned equally, or in proportion to each partner's contribution. It's especially important to document what share of jointly held property you each own. A written agreement strengthens your ownership claim if the relationship ends.
- Property with titles you acquire during the relationship, either separately or together--Ownership of this property depends on how it is listed on the title, whether as a sole ownership, a joint tenancy with rights of survivorship (JTWROS), or a tenancy in common.

If you jointly hold property, identify what share you each own. If the ownership is not split equally, specify the terms. Outline any arrangement you have for the minority owner to equalize his or her share.

**Caution:** If you list your partner on a title without a fair exchange of value, the IRS could consider this a gift subject to gift tax. Describe how you'll divide jointly held property if your relationship ends. Will one of you have the right of first refusal, that is, the first right to remain in a jointly owned house and buy the other out? If so, how will you determine the value, and over what period of time will the buyout take place? Or, will you sell the property and divide the proceeds?

### ***Supports other legal documents***

A domestic partner agreement needn't address concerns that are covered by other legal documents, such as deeds of title, wills, living trusts, and durable powers of attorney for health care and finances. However, it can provide an important supporting document for them. Suppose the title to your home was not properly recorded as a JTWRROS, and at your death, it is discovered that it was drafted and recorded as a tenancy in common. Your legal next of kin could lay claim to your share. A written agreement declaring your intention to leave sole ownership of the property to your partner will support your partner's claim to the property. It can also bolster your will in case disapproving relatives contest it.

## **What are the strengths of a domestic partner agreement?**

### ***Helps prevent disagreements before they occur***

By setting clear ground rules, a domestic partner agreement can ultimately help your relationship run more smoothly. Many relationships break down over differing expectations about the handling of money and finances. These differences are often only discovered when dissension occurs.

### ***Helps settle disagreements if the relationship ends***

If your relationship ends, a well-written domestic partner agreement can protect you, helping you avoid emotionally draining and costly legal battles.

### ***Supports your wishes after your death***

In case of death, it can support your will and your partner's right to jointly held property by stating your wishes and intentions for the disposition of your property.

## **What are the tradeoffs of a domestic partner agreement?**

### ***Can be a sensitive subject to broach***

A domestic partner agreement can be a delicate subject to broach with your partner, especially if your relationship is young or you've never held candid discussions of financial matters. You need to consider whether attempting to address these matters legally will help or hurt your relationship.

### ***Requires periodic updating***

If you decide to proceed with a domestic partner agreement, be prepared to update it periodically.

## Will your domestic partner agreement hold up in court?

### *Courts generally recognize contracts between unmarried partners*

Courts generally recognize contracts between unmarried partners as long as they violate no laws or public policy, are consistent with contract law, and are entered into willingly. However, there are no guarantees--contracts can be contested in court. Have an attorney draft your agreement or at least review it.

## What happens if your relationship ends and you don't have a domestic partner agreement?

### *No uniform guidelines exist to divide shared property and finances*

If your relationship ends, no specific guidelines exist to divide shared property and finances other than the general principles of contract law. Because you cannot turn to a divorce court or to specific statutes regarding cohabitation and domestic partner arrangements, costly and emotionally draining legal battles may ensue. Your fate will be left to a judge who must rule on your intentions and those of your partner and must determine the disposition of your shared property.

## Does a domestic partner agreement provide all the legal protection you need?

### *Should be supplemented with other legal documents*

Because a domestic partner agreement primarily covers the sharing of income, expenses, and property, it doesn't address the many other areas requiring protection. In order to provide more complete legal coverage, you should supplement it with the following documents:

- Durable power of attorney for health care, also called a health-care proxy
- Durable power of attorney
- Will or living trust
- Key documents to protect your parental rights

**Caution:** Consult an attorney to draft these documents. They may need to be notarized or witnessed, and all of them can be contested in court. Keep in mind, too, that these documents need to be periodically reviewed and updated as your circumstances change.

## What if you still don't want a domestic partner agreement?

If you're young (or old) and in love or you simply don't choose to base your relationship on a legal contract with the ongoing tension it could create, there are still some things you can do to prevent problems and protect your rights.

### *Own property separately*

Consider owning household goods and other personal property separately. Make it a practice to keep receipts showing who owns what.

### ***Clarify ownership with deeds of title***

For titled property, such as a house or a car, the name(s) listed on the title determines who owns the property. Titles supersede any written documents to the contrary, including a domestic partner agreement or even a will.

### ***Maintain separate finances***

Keep your finances separate. Avoid holding joint bank accounts and credit cards. Either divide up the household bills or reimburse your share to each other from individual checking accounts.

### ***Hope for the best***

Some relationships endure for decades with hardly any problems. However, many couples require extensive legal action to resolve issues once they arise.

## **Questions & Answers**

### ***Is a domestic partner agreement similar to a prenuptial agreement?***

A domestic partner agreement is similar to a prenuptial agreement and covers many of the same concerns. It is different in that it is not followed by a marriage and may not have the same status in court.

### ***How does a domestic partner agreement differ from a domestic partnership?***

A domestic partnership is a registered relationship between unmarried partners that provides official recognition of your union. A growing number of cities allow domestic partner registrations, and a few states recognize them. They generally require you and your partner to sign an affidavit declaring your relationship and to pay a small fee.

Some believe that these registrations offer few if any benefits while possibly exposing you to liability for your partner's debts. Be sure to examine your rights and obligations before registering your relationship. You don't need to have a registered domestic partnership to sign a domestic partner agreement. Nor do you need a domestic partner agreement to register a domestic partnership. The two operate independently of each other.

### ***What are domestic partner benefits?***

Domestic partner benefits refer to a wide variety of fringe benefits employers offer the unmarried partners of employees. These can include health insurance, family medical leave to care for an ailing partner, and bereavement leave at the death of a partner. Often, the most important benefit is health insurance. Unfortunately, the value of health insurance provided to your domestic partner is taxable to you as income at the federal level (but not always at the state level).

**Caution:** The laws regarding domestic partner benefits generally apply only to same-sex partners. However, not all employers offer domestic partner benefits. When available, some employers restrict domestic partner benefits to same-sex partners, while most offer benefits to both same-sex and opposite-sex partners.

### ***How do you know if your relationship is protected as a common law marriage?***

To be valid, a common law marriage must meet the following conditions:

- You must be an opposite-sex couple
- You must reside in a state that recognizes common law marriage
- You must live together for a significant period of time, although no state defines the exact length of time
- You must present yourselves as a married couple, typically by using the same last name, referring to each other as husband and wife, or filing a joint tax return
- You must intend to be recognized by others as a married couple

When a common law marriage exists, the relationship can only be ended through a formal divorce.



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