

DOMESTIC PARTNERSHIP AGREEMENT OPT INTO THE DIVORCE RULES

DOMESTIC PARTNERSHIP AGREEMENT ENTERED INTO BY AND BETWEEN

AND

Dated this _____ day of _____, 20_____

WHEREAS, parties intend to be in a committed, long term relationship (hereafter, “domestic partnership”); and

WHEREAS, parties intend to share a household; and

WHEREAS, parties wish to fix and determine the rights and claims that will accrue to each of them in the property and estate of the other by reason of their cohabitation in order to avoid litigation and the costs associated therewith in the case of a termination of the partnership; and

WHEREAS, parties accept the provisions of this Agreement in full discharge and satisfaction of such rights;

THEREFORE, the parties enter into the following agreements:

General Statement of Intent: It is the intent of both parties to treat their partnership as if it were a marriage under the laws of Colorado. In the event of the termination of the partnership, parties will not go to court, but will submit any issues that they cannot resolve between themselves to binding arbitration. The arbitrator shall apply the property, debt and maintenance provisions of the Colorado Uniform Dissolution of Marriage Act, as found at C.R.S. § 14-10-101 *et seq.*, to the parties’ partnership.

The parties agree that for the purposes of this Agreement, the committed partnership began _____, 20_____.

SECTION 1. Arbitration Agreement

1.1 Agreement to Arbitrate

Parties agree that if their partnership should terminate, they will submit any unresolved financial issues, including the issues of division of property, debt and maintenance, to an arbitrator. Arbitration shall be the sole remedy available to either party with respect to any financial issue between them that arises from parties’ partnership.

1.2 Rules of Arbitration

Arbitration between the parties shall be governed by the Uniform Arbitration Act, C.R.S. § 13-22-201, *et seq.*

The arbitrator shall make his or her award no more than 10 days after the completion of the arbitration proceeding.

1.3 Appointment of Arbitrator

Parties shall mutually agree upon an arbitrator. However, the arbitrator must be an attorney licensed to practice in the state of Colorado, or in the state that the parties are both residing. Further, the arbitrator shall have at least 30 hours of mediation and/or arbitration training. The arbitrator shall also have at least 5 years experience as a family law practitioner.

If parties are unable to agree upon an arbitrator, they shall each choose one arbitrator, and those arbitrators together shall then choose the arbitrator.

Parties shall evenly split all costs of arbitration. The arbitrator shall not have the authority to otherwise divide the costs of the arbitrator between the parties.

Arbitration shall be initiated as follows. Once the partnership has terminated, either party may request that unresolved financial issues between the parties be arbitrated. The requesting party shall make her/his request in writing to the other party, and shall include the name of a proposed arbitrator. The other party shall then have 10 days to accept or reject the proposed arbitrator. If the arbitrator is rejected, the rejection must be in writing and the objecting party must propose an alternative arbitrator. If there is no written objection within 10 days, the proposed arbitrator will be used.

If the first proposed arbitrator is rejected, the other party will have 10 days to accept or reject the alternative arbitrator. This must be done in writing. If there is no written objection, the alternative arbitrator shall be the arbitrator. If the parties each object to the other party's proposed arbitrator, parties shall each call their proposed arbitrators within 10 days of the second written objection. Those arbitrators will be directed to agree upon a third arbitrator within 5 days.

Once an arbitrator has been identified, the party initially requesting arbitration shall contact the arbitrator and set a time for arbitration. The party setting the arbitration shall obtain 3 potential arbitration dates from the arbitrator. The other party shall choose one of those days.

Discovery shall be handled in accordance with the Uniform Arbitration Act, but parties shall exchange mandatory disclosures pursuant to C.R.C.P. 26.2(a).

Nothing in this section shall prohibit parties from participating in mediation before arbitration.

SECTION 2. Application of Uniform Dissolution of Marriage Act

2.1 Agreement to Have Uniform Dissolution of Marriage Act Statutes Apply

Parties agree that the arbitrator shall apply the Colorado Uniform Dissolution of Marriage Act, (UMDA) C.R.S. § 14-10-101, *et seq.* to their unresolved financial issues, including unresolved issues of debt, property and maintenance.

The arbitrator may take into consideration financial issues that have been resolved between the parties when determining an equitable distribution of property and debt between the parties.

Parties agree that they have each consulted with or had the opportunity to consult with counsel of their choosing regarding the legal ramifications of agreeing to have the UMDA applied to them.

Each party understands that they may be waiving rights that they may have had at law in absence of this agreement.

2.2 General Understanding of Parties with Respect to Property Division

(1) Parties understand that, in general, the arbitrator shall set apart to each partner his/her separate property and shall divide the joint property, without regard to misconduct during the partnership, in such proportions as the arbitrator deems just after considering all relevant factors including:

(a) The contribution of each partner to the acquisition of the joint property, including the contribution of a partner as homemaker;

(b) The value of the property set apart to each partner;

(c) The economic circumstances of each partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the partner with whom any children reside the majority of the time; and

(d) Any increases or decreases in the value of the separate property of the partner during the partnership or the depletion of the separate property for joint purposes.

(2) For purposes of this agreement, and subject to the provisions of subsection (7) of this section, “joint property” means all property acquired by either partner after the beginning of the committed partnership except:

(a) Property acquired by gift, bequest, devise, or descent;

(b) Property acquired in exchange for property acquired prior to the partnership or in exchange for property acquired by gift, bequest, devise, or descent;

(c) Property acquired by a partner after termination of the partnership; and

(d) Property excluded by valid agreement of the parties.

(3) Subject to the provisions of subsection (7) of this section, all property acquired by either partner subsequent to the beginning of the committed partnership and prior to a the termination of the partnership is presumed to be joint property, regardless of whether title is held individually or by the partners in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of joint property described in this subsection (3) is overcome by a showing that the property was acquired by a method listed in subsection (2) of this section.

(4) Subject to the provisions of subsection (7) of this section, an asset of a partner acquired prior to the beginning of the committed partnership or in accordance with subsection (2) (a) or (2) (b) of this section shall be considered as joint property, for purposes of this article only, to the extent that its present value exceeds its value at the time of the beginning of the committed partnership or at the time of acquisition if acquired after the beginning of the committed partnership.

(5) For purposes of this section only, property shall be valued as of the date of the arbitration on disposition of property.

(6) Parties understand that the arbitrator may divide pensions, deferred compensation and retirement funds. However, parties also recognize that they will not be able to direct the plan administrator of such pensions, deferred compensation and retirement funds to divide such funds pursuant to a qualified domestic relations order. Further, parties recognize that they will not be able to take advantage of certain tax benefits enjoyed by married persons in dividing such assets. The arbitrator shall take such facts and tax consequences into consideration.

(7) (a) For purposes of subsections (1) to (4) of this section only, except with respect to gifts of nonbusiness tangible personal property, gifts from one partner to another, whether in trust or not, shall be presumed to be joint property and not separate property. This presumption may be rebutted by clear and convincing evidence.

(b) For purposes of subsections (1) to (4) of this section only, “property” and “an asset of a partner” shall not include any interest a party may have as an heir at law of a living person or any interest under any donative third party instrument which is amendable or revocable, including but not limited to third-party wills, revocable trusts, life insurance, and retirement benefit instruments, nor shall any such interests be considered as an economic circumstance or other factor.

2.3 Understanding of Parties with Respect to Maintenance

(1) Parties understand that, in general, the arbitrator shall have the authority to award maintenance to either party.

(2) (a) If one party requests temporary maintenance and when the combined annual gross income of the two parties is seventy-five thousand dollars or less, there shall be a rebuttable presumption in favor of a specific award of temporary maintenance from the higher income party to the lower income party based upon the formula set forth in paragraph (b) of this subsection (2). In those cases in which the combined annual gross income of the parties exceeds seventy-five thousand dollars, the arbitrator may award a monthly amount of temporary maintenance pursuant to the provisions of subsections (3) and (4) of this section.

(b) (I) (A) The monthly amount of temporary maintenance in cases in which the parties' combined annual gross income is seventy-five thousand dollars or less shall be equal to forty percent of the higher income party's monthly adjusted gross income less fifty percent of the lower income party's monthly adjusted gross income. If the remainder of such calculation is the number zero or a negative number, the presumption shall be that temporary maintenance shall not be awarded. If the remainder of such calculation is more than zero, that amount shall be the amount of the monthly temporary maintenance.

(B) In any action to establish or modify temporary maintenance pursuant to this subsection (2), the formula set forth in sub-subparagraph (A) of this subparagraph (I) shall be used as a rebuttable presumption for the establishment or modification of the amount of temporary maintenance. An arbitrator shall deviate from the formula where its application would be inequitable or unjust. Any such deviation shall be accompanied by written or oral findings by the arbitrator specifying the reasons for the deviation and the presumed amount under the formula without deviation.

(C) The parties may agree in writing to waive temporary maintenance under this subsection (2) where one party is otherwise entitled to temporary maintenance under the formula or the parties may agree in writing to deviate from the presumptive amount of temporary maintenance. Any such agreement to waive temporary maintenance or to deviate from the presumptive amount shall include the reason or consideration for the waiver or deviation. The arbitrator shall have jurisdiction to review such agreement and to decline to approve such agreement if the arbitrator determines that the agreement is unconscionable.

(II) At the time of the initial establishment of temporary maintenance pursuant to this subsection (2), or in any proceeding to modify a temporary maintenance order pursuant to this subsection (2), if a party is under an obligation to pay maintenance pursuant to a prior valid arbitration award or court order, an adjustment shall be made revising such party's income by the amount of such maintenance actually paid prior to calculating the amount of temporary maintenance.

(III) At the time of the initial establishment of temporary maintenance pursuant to this subsection (2), or in any proceeding to modify a temporary maintenance order pursuant to this subsection (2), if a party is legally responsible for the support of other children who are not the children of the parties and for whom the parties do not share joint legal responsibility, an adjustment shall be made revising such party's income by the amount of such child support paid prior to calculating the amount of temporary maintenance.

(IV) (A) For purposes of this section, "income" shall have the same meaning as that term is described in section 14-10-115 (7).

(B) For purposes of calculating the formula set forth in this paragraph (b), "monthly adjusted gross income" means gross income less preexisting maintenance obligations actually paid by a party as described in subparagraph (II) of this paragraph (b) and less the amount of child support paid by a party, as described in subparagraph (III) of this paragraph (b).

(c) The period of time covered by any temporary maintenance ordered pursuant to this subsection (2), upon the request of a party, shall begin at the time of the termination of parties' partnership taking into consideration payments made by either party during such period.

(d) Because maintenance awards entered at temporary orders pursuant to this subsection (2) are made under different standards and for different reasons than maintenance awards entered at permanent orders, the temporary maintenance formula set forth in this subsection (2) shall not be used for the determination of maintenance orders to be entered at permanent orders and any temporary maintenance order entered pursuant to this subsection (2) shall not prejudice the rights of either party at permanent orders.

(e) After determining the presumptive amount of temporary maintenance pursuant to this subsection (2) the arbitrator shall consider the respective financial resources of each party and determine the temporary payment of marital debt and the temporary allocation of marital property.

(3) The arbitrator may grant a temporary maintenance award when the parties' combined annual gross income is more than seventy-five thousand dollars or a maintenance order at the time of permanent orders for either partner only if it finds that the partner seeking maintenance:

(a) Lacks sufficient property, including joint property apportioned to him/her, to provide for his/her reasonable needs; and

(b) Is unable to support himself/herself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(4) A temporary maintenance order in those circumstances in which the parties' combined annual gross income is more than seventy-five thousand dollars or a maintenance order entered at the time of permanent orders shall be in such amounts and for such periods of time as the arbitrator deems just, without regard to misconduct, and after considering all relevant factors including:

(a) The financial resources of the party seeking maintenance, including joint property apportioned to such party, and the party's ability to meet his/her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and that party's future earning capacity;

(c) The standard of living established during the committed partnership;

(d) The duration of the committed partnership;

(e) The age and the physical and emotional condition of the partner seeking maintenance; and

(f) The ability of the partner from whom maintenance is sought to meet his/her needs while meeting those of the partner seeking maintenance.

(5) Subsequent to the arbitration award, the arbitrator may modify maintenance awards if the arbitrator awarded maintenance and the parties have not agreed to limit the arbitrator's jurisdiction to exclude the modification of maintenance. The provisions of any award respecting maintenance may be modified only as to installments accruing subsequent to the motion for modification filed with an arbitrator and only upon a showing of changed circumstances so substantial and continuing as to make the terms unfair. Parties shall use the procedure in section 1.3 of this Agreement if a party wishes to modify maintenance.

2.4 Understanding of Parties with Respect to Attorney Fees

The arbitrator, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this agreement and for attorney's fees, including sums for legal services rendered and costs incurred in conjunction with the enforcement of this agreement. The arbitrator may order that the amount be paid directly to the attorney, who may enforce the order in his or her name.

SECTION 3. Termination of Partnership

3.1 Definition of Termination of Partnership

The duration of the partnership shall be defined to mean the period from the date that the partnership began, as set forth in this Agreement, until the first of the following events to occur:

a. The filing of a Certificate of Termination of Domestic Partnership with a domestic partnership registry; or

b. The execution of a Separation Agreement; or

c. The physical separation of the parties, for over one month, that is not related to an illness or travel.

The partnership shall be deemed to have terminated for the purposes of this Agreement upon the happening of the first of either of the events set forth above.

SECTION 4. Issues Regarding Children

If parties have children together, and, upon a dissolution of the partnership, must make arrangements regarding children, parties shall not be obligated to arbitrate these issues. Rather, parties understand that current Colorado law does address their situation.

However, parties agree that they each agree to financially support any children of the partnership as if they were each a legal and natural parent of any children of the partnership.

Further, parties agree to attend at least 3 mediation sessions before setting any hearing with the court on child related issues. A mediator shall be chosen by the parties in the same way that the parties are to choose an arbitrator pursuant to section 1.3 of this Agreement. Parties shall evenly split the costs of all mediation.

SECTION 5. Miscellaneous

5.1 Advice of Counsel

Parties each warrant that they have each had the opportunity to obtain independent legal counsel prior to the execution of this Agreement. To the extent requested, each party's respective legal counsel has advised him or her of the meaning of the various provisions of this Agreement. Parties have been advised of their rights in the absence of such an Agreement.

5.2 Full Disclosure

Parties warrant that they have each had the benefit of full disclosure of the assets of the other party. Each party agrees that he/she knows and comprehends the holdings of the other party. _____ has provided to _____ a simple balance sheet, which is attached as Schedule A, and which fully discloses all of his/her assets and liabilities as of the date of signature. _____ specifically warrants that he/she has received and reviewed this document. _____ has provided to _____ a simple balance sheet, which is attached as Schedule B, and which fully discloses all of his/her assets and liabilities as of the date of signature. _____ specifically warrants that he/she has received and reviewed this document.

Both parties agree that the values for the property listed on the other party's simple balance sheet are accurate values. Each party has had the opportunity to obtain their own valuations or appraisals of the other party's property, and has chosen not to, because they believe the valuation is correct. If the valuation is not accurate, both parties warrant that such inaccuracy will not render this Agreement null and void. Both parties specifically agree that they will not challenge the validity of this Agreement on the grounds that the values assigned to property on the simple balance sheet is inaccurate, as both parties have had the option of valuing the property at the time of the signing of the Agreement.

5.3 Absence of Duress

Parties acknowledge and represent that this Agreement has been executed by them free from fraud, undue influence or economic, physical or emotional duress of any kind whatsoever exerted by the other or by any other persons.

5.4 Consideration

Parties agree that they have entered into this Agreement for good and valid consideration, being the mutual promises and covenants contained in this Agreement.

5.5 Severability

Should any provision of this Agreement in any proceeding instituted by either party in any court of competent jurisdiction be held to be invalid or unenforceable, all other provisions shall, nevertheless, continue in full force and effect.

5.6 Entire Agreement

This instrument contains the entire understanding and agreement of the parties. All prior conversations, communications, representations, correspondence, and other writings are merged into this instrument, which, alone, sets forth the understanding and agreement of the parties.

5.7 Indemnification and Hold Harmless

If either party fails to abide by the terms of this Agreement, then the defaulting party will indemnify and hold the other harmless for all reasonable expenses and costs, including attorney fees and disbursements incurred in successfully enforcing this Agreement or asserting or defending his or her rights hereunder against the other party or third parties.

5.8 Effective Date and Durability of Agreement

The Agreement shall become effective upon its signing by both parties.
The Agreement shall continue in full force and effect until revoked in a writing signed by both parties.

5.9 Governing Law

The laws of the State of Colorado shall govern this Agreement.

AGREED TO BY:

Date

Signature

Date

Signature