

## DISSOLVING THE DOMESTIC PARTNERSHIP

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### I. PROOF OF INTENT.

The seminal appellate case on domestic partnership dissolution in Oregon is the Supreme Court's decision in *Beal v. Beal*, 282 Or 115, 577 P2d 507 (1978). In *Beal*, the court abandoned its previous "meretricious relationship" doctrine, which held that unmarried cohabitants had entered into a relationship outside the bounds of the law and could not receive the attention of equity. See *Traver v. Naylor*, 126 Or 193, 207, 268 P 75 (1928); *Merit v. Losey*, 194 Or 89, 102-03, 240 P2d 933 (1952). Under *Beal*, by contrast, the court may undertake an equitable distribution of the property of unmarried cohabitants based upon the express or implied intent of the parties:

We believe a division of property accumulated during a period of cohabitation must be begun by inquiring into the intent of the parties, and if an intent can be found, it should control that property distribution. While this is obviously true when the parties have executed a written agreement, it is just as true if there is no written agreement. \* \* \* Thus, absent an express agreement, courts should closely examine the facts in evidence to determine what the parties implicitly agreed upon.

More often than not, such an inquiry will produce convincing evidence of an intended division of property, but we recognize that occasionally the record will leave doubt as to the intent of the parties. In such cases, inferences can be drawn from factual settings in which the parties lived.

*Beal*, 282 Or at 122 (citations omitted).

Virtually no dissolutions present the convenience of a written agreement, or even an oral agreement that the separating partners each view in the same way. As a result, the practitioner is almost always faced with the prospect of proving the nature and extent of the parties' intent to share property. Complicating the analysis is the fact that the parties may have agreed to share some property and not to share other property. *See Ewing and Harrison*, 206 Or App 478, 136 P3d 1157 (2006); *Wallender v. Wallender*, 126 Or App 614, 870 P2d 232, *rev den*, 319 Or 150 (1994); *Brazell v. Meyer*, 42 Or App 179, 600 P2d 460 (1979). Factors the courts have found persuasive in proving intent in the absence of an express intention include the following:

- Assistance with career objectives (*Wilbur*)
- Beneficiary designations (*Wilbur*)
- Cohabitation (*Beal; Pinto; Raimer; Rogelis; Brazell; Rissberger*)
- Conception and birth of child (*Rissberger*)
- Contribution of income or resources to household (*Beal; Wilbur;*

*Holloway; McWhirter; Rissberger*)

- Contributions to real property (*Pinto; Wallender; Wilbur; Raimer*)
- Efforts at accounting or reimbursement (*Beal; McWhirter*)

- Form of title on legal documents (*Beal*, Linde, J., concurring and dissenting; *Holloway*; *McWhirter*; *Ireland*; *Rogelis*; *Brazell*)
- Holding out as husband and wife (*Beal*, Linde, J., concurring and dissenting; *Holloway*; *Rogelis*; *Brazell*)
- Homemaker services (*Wilbur*; *Rogelis*)
- Joint vs. separate bank and credit card accounts (*Beal*; *Pinto*; *Raimer*; *Holloway*; *Rissberger*)
- Operation of business (*Raimer*; *McWhirter*)
- Plans for retirement (*Wilbur*)
- Purchase of insurance (*Raimer*)
- Use of surname (*Holloway*; *Rogelis*; *Brazell*)
- Wearing of ring (*Holloway*)

*Beal*; *Pinto and Smalz*, 153 Or App 1, 955 P2d 770 (1998); *Wallender*; *Wilbur v. DeLapp*, 119 Or App 348, 850 P2d 1151 (1993); *Raimer and Wheeler*, 119 Or App 118, 849 P2d 1122 (1993); *Wilkinson v. Higgins*, 117 Or App 436, 844 P2d 266 (1992); *Shuraleff v. Donnelly*, 108 Or App 707, 817 P2d 764 (1991); *Holloway v. Holloway*, 63 Or App 343, 663 P2d 798 (1983); *McWhirter v. McWhirter*, 54 Or App 409, 635 P2d 12, *rev den*, 292 Or 334 (1981); *Ireland v. Flanagan*, 51 Or App 837, 627 P2d 496 (1981); *Rogelis v. Pettis*, 49 Or App 537, 619 P2d 1339 (1980), *rev den*, 290 Or 449 (1981); *Brazell*; *Rissberger v. Gorton*, 41 Or App 65, 597 P2d 366, *rev den* (1979).

## II. EQUITABLE DISTRIBUTION.

The second major case on distribution of property in a domestic partnership is *Shuraleff*. In that case, the Court of Appeals observed that exclusive focus on the parties' intent as suggested by *Beal* would frustrate the "equitable principles" underlying the *Beal* holding. Although the statutory presumption of equal contribution, ORS 107.105(1)(f), does not apply in a non-marital relationship, the court recognized that the property division "should recognize the parties' efforts over 15 years of cohabitation to build a future based on the contributions of both." *Shuraleff*, 108 Or App at 714. Accordingly, the court might distribute property retained by one party alone in order to accomplish an equitable result. *See also Raimer*.

Subsequent cases have held that, once the parties' intent to share property is established, the court, much like in a marriage, may exercise plenary authority over all of the parties' property "to reach a fair result based on the circumstances of each case." *Wilbur*, 119 Or App at 352; *Pinto*. Nevertheless, the court has cautioned, the parties' intent remains the controlling factor in the distribution of partnership property; "equity will not compel what is contrary to their contemplation." *Wallender*, 126 Or App at 619 (distinguishing *Wilbur* and *Shuraleff*); *see also Ewing*.

## III. AVAILABILITY OF RELIEF INCIDENT TO DIVORCE.

Oregon domestic partnership cases have thus far been limited to property division issues that arise from the express or implied intent of the parties. There are some old cases suggesting that a contract to provide support may be enforceable. *Morrison v. McAtee*, 23 Or 530, 32 P 400 (1893); *Tippin v. Ward*, 5 Or 450 (1875). But current cases hold uniformly that remedies such as spousal support, attorney fees, and the presumption of equal contribution to marital assets, being creatures of the state domestic relations statutes, cannot be applied in an equitable or common-law dissolution of a domestic partnership. *See, e.g., Brazell*, 42 Or App at 182 n 1 (spousal support).

This thinking may need to be re-examined in the case of same-sex domestic partners. In *Tanner v. Oregon Health Sci. Univ.*, 157 Or App 502, 971 P2d 435 (1998), the court held that excluding same-sex couples from the benefits and protections of state law through the vehicle of marriage amounted to sexual orientation discrimination, because, under state law, same-sex couples could not marry. That discrimination, the court held, violated the Privileges and Immunities Clause contained in Article I, section 20, of the Oregon Constitution. No Oregon case has yet explored whether *Tanner* requires that same-sex couples be accorded statutory “divorce” relief upon the dissolution of their relationships.

#### IV. EFFECT OF DOMESTIC PARTNERSHIP LAWS.

Several Oregon communities have adopted domestic partnership registration ordinances. Those ordinances generally follow the model of other ordinances adopted by numerous communities across the United States. The Multnomah County ordinance is typical in requiring the parties to sign a certificate stating that they are residing together and sharing the common necessities of life, are not married or registered as domestic partners in any other jurisdiction, are at least 18 years of age, are not related by blood kinship closer than would bar marriage in the state of Oregon, are mentally competent to consent to the contract, are each other's sole domestic partner with the intent to remain so indefinitely, and are responsible for each other's common welfare.

Several states have also enacted statewide domestic partnership laws that carry with them a restricted set of legal benefits and obligations that vary from state to state. Those statutes stand in contrast to the registration of a domestic partnership with a local government agency, which generally has no direct legal effect. The local ordinances are conceived simply as a way for unmarried couples to demonstrate the existence of their relationship to government entities and to employers for the purpose of receiving benefits that may be made available to domestic partners.

The effect of both types of registrations in Oregon dissolution law may be limited to their use as an indicator of the parties' intent in forming their relationship. Depending on the exact language of the affidavit executed by

the parties to obtain the registration, it may serve as powerful evidence of their intent to share property. In Multnomah County, registering couples are being provided with a packet of information regarding legal issues to consider in formalizing the relationship. Certainly no one should enter into a domestic partnership registration without considering and planning for the potential legal consequences.

#### V. EFFECT OF "CIVIL UNION" STATUTES.

Three states—California, Connecticut, and Vermont—have enacted so-called "civil union" statutes that accord to same-sex couples some or all of the benefits and obligations of marriage, but under a different name. Not surprisingly, the portability of such unions to other states is subject to great dispute. Putting aside the non-dissolution cases, a trial judge in Massachusetts has granted the dissolution of a Vermont civil union, treating it much as a civil marriage, *see Salucco v. Alldredge*, 17 Mass L Rptr 498, 2004 WL 864459 (Mass Super Ct 2004); while the Appellate Court of Connecticut has refused to do the same, *see Rosengarten v. Downes*, 71 Conn App 372, 802 A2d 170, *appeal dismissed as moot*, 261 Conn 936, 806 A2d 1066 (2002).

No one knows how many couples now living in Oregon have entered into civil unions in other states. It is safe to say that such unions will be accorded great evidentiary weight in determining whether the parties intended to form a domestic partnership and intended to share property.

Whether an Oregon court will undertake dissolution of the civil union or will apply the dissolution-of-marriage statutes remains a matter for speculation. Oregonians considering forming a civil union in another state should be made aware that at least some states – Vermont, in particular – do have residency requirements for their dissolution. *See, e.g.,* Vt Stat Ann tit 15, § 1206. If an Oregon court will not undertake the dissolution, the parties may be left with no forum in which the relationship can legally be dissolved.

## VI. EFFECT OF SAME-SEX MARRIAGE.

### A. Oregon.

In March and April 2004, the county clerk in Multnomah County issued over 3,000 marriage licenses to same-sex couples, based upon the clerk's reading of Article I, section 20, and the *Tanner* decision. Two events of legal significance followed in the wake of subsequent publicity. First, the voters approved an amendment to the state constitution providing that "[i]t is the policy of Oregon, and its political subdivisions, that only a marriage between one man and one woman shall be valid or legally recognized as a marriage." Or Const, Art XV, § 5A. Second, the Supreme Court held that the Multnomah County marriages were void *ab initio*. *Li v. State*, 338 Or 376, 110 3d 91 (2005).

Once again, these marriages, void though they may be, are a strong indicator of the parties' intent and can be used as evidence in a dissolution of

a domestic partnership case. Practitioners should bear in mind, however, that Oregon law does accord some legal effects even to void marriages. The clearest example of this can be seen in ORS 109.070, which provides for a presumption of paternity for a child born during a marriage, whether or not the marriage may be void. (The State Registrar has declined to recognize this reading of the statute, although there is pending litigation that may decide the question.)

Similarly, although the issue is not frequently encountered, all of the relief set forth in the dissolution-of-marriage statutes is equally available in the annulment of a marriage—even a marriage that is void in its inception. *See* ORS 105.105(1); *Denis and Denis*, 153Or App 655, 958 P2d 199 (1998). Although the application of the annulment statute to the Multnomah County same-sex marriages is not entirely clear, *see* Mark Johnson, *Update: Annulment of Oregon Same-Sex Marriages?*, Family Law Newsletter (Oregon State Bar, June 2005), practitioners should bear the question in mind until the matter is resolved through litigation. A trial judge in Connecticut has denied an annulment to a same-sex couple in a void marriage in the face of a statute that appears broader in its application than Oregon's. *See Lane v. Albanese*, 39 Conn L Rptr 3, 2005 WL 896129 (Conn Super Ct 2005).

#### **B. Other Jurisdictions.**

One state (Massachusetts) and numerous foreign nations (most notably, for our purposes, Canada) have in recent years legalized marriage between

same-sex couples on the same terms as opposite-sex couples. Massachusetts, applying a statute still in effect from the anti-miscegenation era, has declined to marry couples whose marriages would be void in their home states. *See Cote-Whitacre v. Dep't of Pub. Health*, 446 Mass 350, 844 NE2d 623 (2006). It seems unlikely that other states that may soon begin permitting such marriages have such statutes or will tolerate their modern application. Certainly Canada has not imposed such restrictions.

It is unknown how many Oregon same-sex couples have entered into Canadian marriages, but the number is no doubt substantial. Based upon Article XV, section 2A, the effect of those marriages in Oregon may once again be restricted to serving as an indicator of intent in dissolving the domestic partnership. (The adoption of Article XV, section 2A, is the subject of a procedural challenge currently before the Oregon Court of Appeals.)

Once again, Oregon couples contemplating marrying in another jurisdiction should be cautioned about their likely inability to dissolve the marriage later because of Oregon's constitutional non-recognition of the relationship and because of residency restrictions on dissolution in other jurisdictions. Remarkable as it may seem, the inability of same-sex couples, lawfully wedded in one jurisdiction, to get divorced in another, is supported by the federal Defense of Marriage Act, *see* 28 U.S.C.A. § 1738C, and is likely to remain the law for the foreseeable future.

## DOMESTIC PARTNERSHIP AGREEMENT

THIS AGREEMENT is made and entered into by and between \_\_\_\_\_, hereafter \_\_\_\_\_, and \_\_\_\_\_, hereafter \_\_\_\_\_.

### RECITALS

1. \_\_\_\_\_ is \_\_\_\_ years old and is unmarried. \_\_\_\_\_ has no children. \_\_\_\_\_ works full time for \_\_\_\_\_ as a \_\_\_\_\_, and earns approximately \$\_\_\_\_\_ a year from his employment.

2. \_\_\_\_\_ is \_\_\_\_ years old and is unmarried. \_\_\_\_\_ has no children. \_\_\_\_\_ works full time for \_\_\_\_\_ as a \_\_\_\_\_, and earns approximately \$\_\_\_\_\_ a year from his employment.

3. The parties have cohabited with each other and have had an intimate relationship since \_\_\_\_\_.

4. The parties intend to form a domestic partnership with this agreement.

5. Any property acquired by either party during their cohabitation, past, present and future, is designated as that party's Separate Property, except as otherwise specifically provided in this Agreement.

6. Each party has had the opportunity to receive the advice and assistance of independent legal counsel. \_\_\_\_\_ has been represented by \_\_\_\_\_. \_\_\_\_\_ has been represented by \_\_\_\_\_.

7. Each party desires to maintain his separate property without interest in the separate property of the other before, during and after their domestic partnership, and agrees to distribute his property to his chosen devisees, donees, beneficiaries or legatees, to the same extent as though this domestic partnership had never taken place, although neither party is precluded from making provisions for the other party by will, gift, or any other manner.

8. It is the desire of each party to waive, release and relinquish any and all claims, equitable or legal, either may have in any separate property of the other, and any and all property derived from such separate property by income, increment, collection, sale or other disposition, whether or not such income, increment or other proceeds shall be reinvested, exchanged or in any other way change character.

9. Each party has certain income-earning potential, and now owns or possesses an ownership interest in various kinds of property, the description, cost, basis, nature and extent of interest, fair market value, and encumbrances of each of which has been fully disclosed to the other by a good-faith, frank, reasonable and full disclosure demanded of a fiduciary and this disclosure is acknowledged by each party.

10. Each party now owes certain separate debts and obligations which are not, and shall not become, the obligation of the other, and each of which has been fully disclosed to the other party by a good-faith, frank, reasonable and full disclosure demanded of a fiduciary and this disclosure is acknowledged by each party.

11. Each party has set forth a schedule of his assets and liabilities as exhibits to this Agreement, \_\_\_\_\_ in Exhibit 1 and \_\_\_\_\_ in Exhibit 2.

12. The parties have established Joint Property. Such Joint Property is set forth in Exhibit 3. The parties may add to their Joint Property as defined in Section 3, subparagraph (b) below.

13. Each party acknowledges that he or she has been afforded sufficient time to consider the provisions of this Agreement and makes this Agreement knowingly and voluntarily.

14. Each party acknowledges that he enters into this domestic partnership in reliance upon the validity of this Agreement and would not enter into the domestic partnership in the absence of this Agreement.

*NOW, THEREFORE*, in consideration of each party's love for the other, and based on the mutual covenants in this Agreement, the parties agree as follows:

#### **SECTION 1. INCORPORATION**

The above recitals are incorporated into this Agreement and made part of this Agreement.

#### **SECTION 2. RECOGNITION**

It is hereby recognized that:

(a) The parties by this Agreement form a domestic partnership, and this Agreement is intended to continue in effect from and after the date they signed this Agreement.

(b) At the time of the formation of their domestic partnership, each party will be the owner of property and assets having the status of his sole and separate property. The separate property of \_\_\_\_\_ is identified as such on exhibit 1 attached, and the separate property of \_\_\_\_\_ is identified as such on exhibit 2 attached, which schedules are incorporated into this Agreement.

(c) The parties acknowledge that the values of specific properties and assets are set forth on both exhibits. The values attached to them are his best estimates of the values of the properties and assets identified as their separate property, and each party waives any requirement for independent appraisals or the reflection of their own

best estimates of values on the schedules and agrees that the disclosures made by the other party are fair and reasonable.

(d) At the time of the formation of their domestic partnership, it is the desire of the parties that each shall release and relinquish any and all right, title or claim, whether equitable or legal, he may have to the Separate Property of the other.

### SECTION 3. DEFINITIONS

(a) The term "Separate Property" of the parties shall refer to the following:

(1) The property and assets and liabilities owned by either at the time of the formation of their domestic partnership, designated as "separate" and described on Exhibit "1" and Exhibit "2";

(2) Any property that either acquires during the domestic partnership by either gift, bequest, devise, or descent;

(3) Any property which is distributed to either party during the domestic partnership which is part of the principal or income of any trust of which either party is a beneficiary;

(4) Any property which is acquired during the domestic partnership as appreciation, gain or increment to the Separate Property of either party;

(5) Any property acquired during the domestic partnership through exchange for other Separate Property of either party;

(6) Any property acquired during the domestic partnership with proceeds from the liquidation or sale of other Separate Property;

(7) The rents, profits, issues, interest and dividends which may from time to time accrue to the Separate Property of either party, whether or not the result of a party's labor and efforts during the domestic partnership;

(8) Funds received and the right to funds acquired as a result of or related to a personal injury or disability claim or judgment occurring during the domestic partnership;

(9) Any earnings of either party from their labor, efforts and investments during the domestic partnership, including, but not limited to, active and passive income, salaries, fees, commissions and similar compensation;

(10) Any benefits and entitlements which arise during the domestic partnership in connection with any pension or retirement plan, including, but not limited to, Keogh, IRA and 401(k), funded during the domestic partnership with earnings of either party and/or the employer of either;

This paragraph also includes any survivor rights arising out of any such pension or retirement plan. Each party expressly agrees to execute all documents necessary to effectuate a waiver of survivor rights in accordance with the provisions of 29 U.S.C. Section 1055c-1 to c-3 and any other applicable statute or rule; and

(11) Any professional degree, license, certificate or practice resulting from either party's education, training or employment.

(b) The term "Joint Property" shall refer to:

(1) The assets listed on Exhibit 3 attached hereto;

(2) Any Separate Property which either party deposits with any financial and similar institution during the domestic partnership in a depository or brokerage account in the names of both and/or \_\_\_\_\_ or \_\_\_\_\_ (whether denominated as a "joint tenancy account, with right of survivorship," or "as tenants in common," or otherwise), which accounts are herein referred to as "Joint Property" Accounts;

(3) Any real or personal property acquired during the domestic partnership by either party by use of the funds on deposit in such "Joint Property" Accounts;

(4) Any Separate Property which either party by express written agreement agrees is thereafter to be considered as "Joint Property";

(5) Any property which is acquired during the domestic partnership as gain or increment to other "Joint Property";

(6) Any property acquired during the domestic partnership through exchange of other "Joint Property";

(7) Any property which is acquired during the domestic partnership with proceeds from the liquidation or sale of other "Joint Property"; and

(8) All rents, profits, issues, interest and dividends which may from time to time accrue to the "Joint Property."

#### SECTION 4. USE AND POSSESSION OF JOINT RESIDENCE

(a) The parties jointly own the residence at \_\_\_\_\_, \_\_\_\_\_, Oregon 97\_\_\_\_, as joint tenants with right of survivorship. The mortgage is in the names of both parties. This residence is Joint Property subject to the provisions of subparagraph (b) below. In the event they have not done so, the parties shall cause a deed to be filed with the appropriate recorder of conveyances evidencing ownership of the property as joint tenants with the right of survivorship.

(b) At the time of the purchase of the joint residence, \_\_\_\_\_ contributed \$\_\_\_\_\_ and \_\_\_\_\_ contributed \$\_\_\_\_\_ towards the total down payment of \$\_\_\_\_\_. The parties intend to equalize their contributions over time. To accomplish this, \_\_\_\_\_ shall pay to \_\_\_\_\_ a total of \$\_\_\_\_\_, payable at the rate of \$\_\_\_\_\_ per year for \_\_\_\_\_ years commencing in calendar year 20\_\_\_\_. The annual payments shall be made by a date to be agreed on by the parties on an annual basis. \_\_\_\_\_ may prepay the \$\_\_\_\_\_ or any remaining balance due thereon at any time without penalty.

(c) So long as the parties reside together in this residence or any subsequent principal residence the following shall apply:

(1) Each party shall timely pay one-half of the monthly mortgage payment(s), home-owner's insurance, property taxes, and repairs or renovations above and beyond customary repairs and maintenance.

(2) Each party shall pay a share of the following expenses in proportion to his income: food and household items, and customary repairs and maintenance.

(3) Each party shall pay 50% of the utilities.

(4) Any repairs or renovations to their joint residence above and beyond customary repairs and maintenance can only be made by written agreement of the parties, and, upon such mutual agreement, shall be equally contributed to.

## **SECTION 5. SEPARATE PROPERTY OF THE PARTIES**

Subject to the provisions of Section 8 below, each party releases, relinquishes and discharges to the other party and to their heirs, devisees, legatees or assigns any and all right, title, claim or interest which he or she may be entitled to claim or assert in and to all the Separate Property of the other party, with the result and effect that neither party nor their heirs, devisees, legatees, personal representatives or assigns or any person claiming by, through or under either party shall have or may assert or claim any right, title or interest in and to the Separate Property of the other party.

## **SECTION 6. EVENTS TO HAVE NO EFFECT**

(a) The parties agree that at no time during their Domestic Partnership shall there be any conversion of any of their Separate Property into Joint Property, other forms of co-ownership, or in the Separate Property of the other except by:

(1) The deposit of Separate Property of either party into a Joint Property Account; or

(2) By an express written agreement.

(b) The following events shall under no circumstances be evidence of any intention by either party or of an agreement between the parties to convert their Separate Property interests into Joint Property, into other forms of co-ownership, or into the Separate Property of the other party;

(1) The filing of joint tax returns (should this become allowable for domestic partners);

(2) The designation of one party by the other as a beneficiary of his estate;

(3) Any oral statement by either party, including any purported oral gift of Separate Property of either party to the other party;

(4) Any written statement by either party other than the express written agreement of transmutation; see also Section 8 of this Agreement;

(5) The joint occupation of residential or recreational real or personal property which is the Separate Property of a party;

(6) Any statement made to any third party that the parties are married, or a statement or reference by one party to a third party that the other party is his spouse, or husband or wife as the case may be.

## **SECTION 7. OBLIGATIONS**

All indebtedness, obligations and liabilities of either party of every kind and description, direct or indirect, absolute or contingent, due or to become due, known or unknown, which is owing at the date of the formation of the domestic partnership of the parties, together with accruing interest thereon, and all indebtedness, obligations and liabilities incurred during the domestic partnership in connection with the purchase or acquisition of Separate Property of either party, with accruing interest, shall be paid from the Separate Property of the party incurring the debt or obligation.

## **SECTION 8. SIGNING AND RELINQUISHMENT OF INSTRUMENTS**

Notwithstanding the provisions of Sections 3 and 5, which the parties intend will obviate the necessity of either of them joining in instruments or documents of conveyance, mortgages, deeds of trust, security agreements, pledges, assignments or other instruments or documents involving the Separate Property of either party, it is nevertheless recognized that third parties dealing with either party may request and require the signature and acknowledgment of the other party or a properly executed and acknowledged instrument or document releasing or disclaiming any right, title or interest in and to the Separate Property of the other.

Accordingly, it is agreed that the act of one party in joining with the other in the execution of any such instrument or document pertaining to the Separate Property

of the other shall not be interpreted or have the effect of changing the status of the ownership of that Separate Property or to give to any party any right, title, claim or interest therein not previously or otherwise held or owned hereunder; and that the act of either party in joining in the execution of any such instrument or document shall not change or alter the agreements of the parties as contained in Section 3 above.

Upon request, \_\_\_\_\_ agrees to make, execute and deliver to \_\_\_\_\_ instruments or documents releasing, disclaiming or discharging any and all right, title, claim and interest in and to the Separate Property of \_\_\_\_\_; likewise, upon request, \_\_\_\_\_ agrees to make, execute and deliver to \_\_\_\_\_ instruments or documents releasing, disclaiming or discharging any and all right, title, claim and interest in and to the Separate Property of \_\_\_\_\_.

### **SECTION 9. INHERITANCE AND THE RIGHT TO DISPOSE OF SEPARATE PROPERTY**

Each party's Separate Property named in his will, irrevocable living trust, or other appropriate customary document, will pass, in trust or otherwise, to his heirs or his devisees named in such document and not to the surviving party.

Notwithstanding the provisions of this Agreement, both of the parties hereto shall have the right to provide from their Separate Property for the other by will or trust made after the execution of this Agreement if he or she so desires, and nothing in this Agreement shall be construed to defeat or render ineffective any bequest or devise of Separate Property from one party to the other expressly set forth in such party's will or trust made after the execution of this Agreement.

It is further agreed that each of the parties at all times has the right to sell, assign, transfer, convey, mortgage, encumber, give or otherwise dispose of all or any part of his Separate Property without the consent of the other.

### **SECTION 10. TERMINATION OF THE PARTIES' DOMESTIC PARTNERSHIP**

While the parties contemplate a long and lasting Domestic Partnership, they also recognize the possibility that their partnership might be voluntarily terminated or as a result of a court proceeding. In the event that their partnership terminates by legal or voluntary separation or a court judgment, and regardless of which party initiates such action, and further regardless of what state or court has jurisdiction or venue of such action, the parties specifically agree as follows:

(a) This domestic partnership shall terminate upon one of the following events, the first occurring:

(1) One of the parties moves from the joint residence and remains away for a period of at least twenty-one (21) days and no effort is made to pursue counseling as contemplated in section 13(a) below; or

(2) The other party delivers a letter or other writing to the other party stating that the domestic partnership is terminated; or

(3) The parties execute a written agreement terminating their domestic partnership; or

(4) A court of competent jurisdiction enters a Judgment of Dissolution/termination.

(b) Each party shall receive all of his separate property;

(c) Excluding the parties' Joint Residence, each party shall receive one-half of the net value of the parties' Joint Property subject to one-half of any joint liabilities or obligations;

(d) The parties' Joint Residence shall be divided as provided in Section 11 of this Agreement;

(e) Neither party shall be entitled to support or separate maintenance, whether in the form of a monthly stipend, a lump sum support order, or property in lieu of support; and

(f) Each of the parties agrees to assume the costs of his own support and the support of his lineal descendants, other than any child of the domestic partnership, and the costs of his own attorney fees and expenses of litigation if the domestic partnership is terminated.

#### **SECTION 11. DIVISION OF JOINT RESIDENCE UPON TERMINATION**

Upon termination of the parties' domestic partnership, the joint residence shall be divided as follows:

(a) If neither party wants to keep the residence, it shall be sold, and the net proceeds divided as follows:

(1) Each party shall receive a portion of the \$\_\_\_\_\_ down payment according to the amount he has contributed as of the time of the sale. For example, if the parties dissolve their domestic partnership before Ken makes any of the equalizing payments described in paragraph 4(b) above, \_\_\_\_\_ shall receive \$\_\_\_\_\_ and \_\_\_\_\_ shall receive \$\_\_\_\_\_. Similarly, if the parties dissolve their domestic partnership after \_\_\_\_\_ has paid two payments of \$\_\_\_\_\_, \_\_\_\_\_ shall receive \$\_\_\_\_\_ and \_\_\_\_\_ shall receive \$\_\_\_\_\_.

(2) The remaining proceeds shall be divided between the parties in proportion to each party's share in the down payment at the time of the sale.

(3) If the residence is sold at a loss, the resulting liability shall be divided proportionally to each party's share in the down payment at the time of the sale.

(b) If one party wants to keep the residence and the other does not, the party keeping the residence shall refinance the mortgage and pay the other an amount to be determined as follows.

(1) The parties shall first determine the fair market value of the residence by averaging three estimated values, one from a formal appraisal, and two from licensed real estate agents, each to be chosen by mutual agreement.

(2) The party keeping the residence shall pay to the other the other's down payment as calculated in paragraph 11(a)(1) above plus one-half of the remaining equity. Equity is determined by subtracting the then current mortgage balance from the fair market value as determined according to the procedure set out in paragraph 11(b)(1).

(c) If both parties want to keep the residence, the party willing to assume the residence for the greatest price shall keep the residence.

## **SECTION 12. DEATH OF EITHER PARTY DURING TERM OF AGREEMENT**

In the event either party dies during the term of this Agreement, the surviving party shall receive, in addition to his own separate property, all of the parties' joint property.

## **SECTION 13. RESOLUTION OF DISPUTES**

(a) Should either party move out of the family home, or its successor, or in the event either party desires to terminate this Agreement, there shall be a cooling-off period of at least twenty-one (21) days during which the parties shall be separate and take no action. If the parties do not reconcile after the 21 days, the parties agree to attend, at either's request, at least three sessions with a counselor over a period of three weeks. During this entire six week period, the parties' financial affairs shall be managed in the ordinary course and scope as existing at that time to the extent possible. Expenditures made outside the ordinary course and scope are to be borne by the party making such expenditures.

(b) In the event a party decides to terminate this agreement and the parties are unable to agree on a division of their joint estate, the parties shall first attempt to achieve such a division through mediation. The parties shall either agree upon one person to act as mediator or, in the absence of such agreement, the parties shall each appoint one person and those two persons shall confer and appoint the mediator. The parties shall then attempt to resolve their differences and to reach a formal agreement through mediation.

(c) Should mediation fail, either party may institute a proceeding in a court of appropriate venue and competent jurisdiction.

#### **SECTION 14. CONSIDERATION FOR AGREEMENT**

The consideration for this Agreement is the cohabitation of the parties, the love and affection of the parties for each other, and the mutual covenants contained in this Agreement. The parties would not enter the domestic partnership contract without the existence and validity of this Agreement.

#### **SECTION 15. EFFECTIVE DATE**

This Agreement shall become effective upon the date of execution of this Agreement and shall inure to the benefit of and be binding upon the respective parties, their heirs, devisees, legatees, personal representatives and assigns.

#### **SECTION 16. CONFIDENTIALITY AND DISCLOSURE**

All information in this Agreement concerning the assets, income and liabilities of the parties, and the sources thereof shall be held in the strictest of confidence and shall not be disclosed to any person unless disclosure is required by legal or administrative process. Each party shall be entitled to disclose this Agreement or its terms to any attorney or other state licensed professional for the purpose of interpreting and giving advice about this Agreement.

#### **SECTION 17. AGREEMENT VOID UPON MARRIAGE**

Should the parties enter into a legally recognized marital relationship with each other, this Agreement will then become void and be of no further force and effect. However, it is anticipated that prior to entering into marriage, the parties will sign a pre-nuptial agreement.

#### **SECTION 18. BINDING ARBITRATION**

Should mediation fail, the parties agree that all disputes concerning this Agreement shall be submitted to binding arbitration. The arbitration shall be administered in accordance with the then effective Arbitration Rules of the Arbitration Service of Portland, Inc., and shall take place in Portland, Oregon. All determinations and the final decision of the arbitrator shall be made in writing. The fees and expenses of the arbitrator may be awarded by the arbitrator in his discretion as part of the award. In the absence of such award of fees and expenses by the arbitrator, such fees and expenses shall be shared equally between the parties. The arbitrator's award shall be binding on the parties and may be entered in any court of competent jurisdiction consistent with the terms of the Uniform Arbitration Act, ORS 36.080 to 36.740. The parties reserve the right to seek a judicial temporary restraining order, preliminary injunction, or other similar short term equitable relief prior to the appointment of the

arbitrator. The arbitrator will have the right to make a final determination of the parties' rights including, without limitation, whether to make permanent, modify or dissolve any temporary, preliminary or other similar short term judicial order.

#### **SECTION 19. DISCLOSURE, RECORDING, MODIFICATION**

(a) Each party acknowledges that this document is a fair, reasonable, just and equitable agreement and is not the result of any fraud, duress, or undue influence exercised by either party upon the other or by any other person or persons upon either. They further agree that this Agreement contains the entire understanding of the parties, and each, after discussion, signs this Agreement freely and voluntarily, neither relying upon any representations other than those expressly set forth. There are no representations, promises, warranties, covenants, or undertakings other than those contained herein. All prior agreements, understandings or representations are hereby terminated and canceled in their entirety and are of no further force and effect.

(b) The parties agree that any financial statement or similar document that either delivers to a third party in connection with any application for extension of credit or renewal or refinancing of any existing indebtedness will disclose the existence and effect of this Agreement and that each party has a separate credit standing.

(c) This Agreement shall not be recorded, but either party may cause a memorandum of this Agreement to be recorded or filed, as may be required by law or as otherwise necessary, in the appropriate governmental office.

(d) This Agreement may be modified only: (1) by a contract signed by both parties, dated and executed after the date and execution of this Agreement, or (2) by court order from a court of appropriate jurisdiction.

#### **SECTION 20. SEVERABILITY**

If any provision of this Agreement is declared void, invalid, inoperative, or otherwise unenforceable by any court of competent jurisdiction, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby and this Agreement shall be effective as though such invalid provision had not been included herein.

#### **SECTION 21. NON-WAIVER**

Waiver by either party of strict performance of any of the provisions of this Agreement shall not be construed as or constitute a waiver of that party's right to later require strict performance of the same or any other provision of this Agreement.

#### **SECTION 22. INTEGRATION**

This Agreement constitutes the sole agreement of the parties upon this subject and integrates and supersedes any and all prior agreements, negotiations and

understandings relating hereto. Specifically, this Agreement revokes the California domestic partnership that the parties have previously entered into. The parties shall take the necessary steps to withdraw from the California domestic partnership registry as they intend to be bound by the terms and conditions of this Agreement instead.

### **SECTION 23. RIGHT TO CONTEST**

Nothing contained herein shall limit the right of either party to contest any suit between them or to file a countersuit against the other party. However, in any hearing on such suit, this Agreement shall be considered a full and complete settlement of all property rights between the parties. In such case, neither party shall maintain any claim or demand whatsoever against the other for division of assets and liabilities, suit money, attorney fees, support, or separate maintenance, or costs which is either inconsistent with or not provided for in this Agreement.

### **SECTION 24. REPRESENTATION OF PARTIES BY COUNSEL**

The parties both agree that they, and each of them, were represented by independent legal counsel of their choice in the preparation of this Agreement and that they fully understand the terms, provisions, and legal consequences of this Agreement. \_\_\_\_\_'s attorney initially drafted proposals for this Agreement. However, it has been thoroughly reviewed by \_\_\_\_\_'s attorney and appropriate changes, where necessary, made therein with \_\_\_\_\_'s input.

### **SECTION 25. EFFECT OF HEADINGS**

The headings or titles of any sections, paragraphs, subsections, subparagraphs, or exhibits are recitals for clarifications only and not substantive in nature.

### **SECTION 26. COSTS OF ENFORCEMENT OF THIS AGREEMENT**

In the event either party does not fulfill all or any of his obligations hereunder strictly in accordance with the provisions hereof, time being of the essence, the predominantly prevailing party, in addition to remedy provided by law or equity, shall be entitled to receive attorney fees and costs if the matter is placed in the hands of an attorney for enforcement, even though no suit or action is filed thereon; however, if a suit, proceeding or action is filed and tried, heard or decided, the amount of such reasonable attorney fees shall be fixed by the arbitrator, court, or courts in which the suit, proceeding or action, including any appeal therein, is tried, heard or decided.

### **SECTION 27. BINDING UPON REPRESENTATIVES**

All of the provisions of this Agreement shall be binding upon the respective heirs, next of kin, executors, administrators, and assigns of the parties.

**SECTION 28. GOVERNING LAW**

This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon.

*IN WITNESS WHEREOF*, this Agreement has been executed by the parties.

DATED: \_\_\_\_\_  
Name \_\_\_\_\_

DATED: \_\_\_\_\_  
Name \_\_\_\_\_

STATE OF OREGON )  
County of Multnomah ) ss.  
)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2006, personally appeared before me the above-named \_\_\_\_\_, and acknowledged the foregoing instrument to be his voluntary act and deed.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON

STATE OF OREGON )  
County of Multnomah ) ss.  
)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2006, personally appeared before me the above-named \_\_\_\_\_ and acknowledged the foregoing instrument to be his voluntary act and deed.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON