

9 Partnership agreement

9.1 Form

The partnership agreement (Switzerland: "Konkubinatsvertrag") is not regulated by law. Marriage law/marital property law does not apply either. Problems that arise between the partners from a legal point of view must therefore be assigned to the areas of law with which they are closely connected. For example, in questions of the validity of contracts between the partners, the general regulations of contractual law (§§ 859 ff ABGB) apply; in questions of rent and subletting, the regulations of tenancy law (§§ 1090 ff ABGB) apply; in questions of whether and on what terms the partners enter into an employment relationship, the regulations of employment contract law (§ 1151 ff ABGB) apply; in questions of property, housing law, etc., the regulations of property law (§§ 1151 ff ABGB) apply. For the question of whether and how the partnership is structured as a contractual relationship, the regulations on the simple partnership (Art. 680 ff PGR) are decisive.

Since the rules of simple partnership are primarily tailored to economic activities and therefore do not always offer suitable solutions for life partners, it makes more sense to set down a written partnership agreement. A formal contract should provide long-term guidance on the fundamental issues of the partnership and, in the event of conflict, form a provable basis for a partner's claims.

The partnership agreement is free of form; notarization or a notary public is not required for the preparation of the agreement. However, if the partners also wish to make arrangements for legal transactions requiring a specific form (purchase of real estate, testamentary dispositions, etc.), a corresponding formal act (e.g. purchase agreement with land register entry) is required in individual cases. These should therefore always be arranged separately, outside the partnership agreement, in order to become legally effective at all.

9.2 Content

There is a great deal of freedom in the formulation of the contract.

The following points should or could be regulated:

- Living expenses: In order to find a fair solution, it is advisable to divide the living expenses according to the respective income ratios.
- Maintenance: Maintenance agreements can be made in any form, especially for the case of separation and if one of the partners is raising shared children.
- Allocation of assets/household goods: It should be made clear in advance which assets have been brought into the cohabitation by whom and who has acquired sole or joint ownership of which objects. This is best done by means of a clearly formulated inventory list.
- Purchase of real estate: If one or both partners purchase a house or a flat, numerous questions arise: Who buys the real estate? Should sole, joint or co-ownership be established? How should it be financed? Who will live there after a separation? ...
- Representation/Power of Attorney: It makes sense if the partners grant each other contractual powers of attorney for certain cases, e.g. for medical information rights, hospital visits etc.

- Shared children: In order to minimize disputes in the event of a possible separation, joint custody should be agreed upon. Questions such as: With whom are the children and when? How will there be an exchange of views on important educational issues? What maintenance contributions are to be made? ...
- Housing: Here it should be clarified who will conclude the tenancy agreement and who will move out of the flat in the event of separation.
- Death: The basic question here is whether one partner should inherit from the other or be provided for in some other way. (Last will and testament, death-risk-insurance, ...).

Questions of inheritance law are not included in the regulations. These can be referred to in a partnership agreement, but in order to be legally binding, they must be regulated in separate so-called testamentary dispositions, i.e. in a unilateral will (only one will) or in a reciprocal will (both partners agree to one will)."

A template for a partnership agreement can be found in the appendix to this e-guide.