OTTO KRAUSE INCORPORATED

# LIFE PARTNERSHIP AGREEMENT: CLIENT INFORMATION QUESTIONNAIRE

*Information required for the drafting of an agreement between partners who live together but are not married to one another*

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|---|---|
| **Client name** | |
| **File / matter reference** | |
| **Attorney dealing** | |
| **Date completed and returned** | |

## HOW TO COMPLETE THIS QUESTIONNAIRE

This questionnaire may be completed on your computer. Click into any shaded block and type your answer. The block will expand as you type. It is not necessary to print the document or to complete it by hand. When you have finished, save the document and e-mail it back to this office.

Where you are unsure of an answer, simply leave the block blank. Several of these questions concern matters upon which you may want our advice before deciding, and that is exactly as it should be. We shall go through the questionnaire once we receive it and contact you about anything outstanding.

You are welcome to contact our offices directly at any stage should you experience any difficulty with any of the questions.

It is not necessary to attach any supporting documentation at this stage. A list of the documents we shall eventually require appears at the end of this questionnaire.

Everything you disclose in this questionnaire is protected by legal professional privilege and will be treated in strict confidence.



## BEFORE YOU BEGIN

A great many South Africans live together in permanent relationships without being married to one another. They buy homes together, raise children together, support one another and build up assets together, and they very often assume that after some period of time the law will treat them as though they were married. It does not. There is no such thing in our law as a common-law marriage, and no number of years of living together creates one.

What that means in practice is that unless you make your own arrangements, the two of you have almost none of the protections that spouses have. There is no automatic sharing of property, no automatic right to maintenance from one another, no automatic right to remain in a home registered in the other's name, and no automatic authority to make decisions for one another in an emergency. A partner who gave up a career, ran the household or worked in the other's business for fifteen years may find at the end of it that she owns nothing, and must go to court and prove the existence of a universal partnership in order to establish a claim.

A life partnership agreement is how that is put right. It is a contract between the two of you, and as a contract it is enforceable in the ordinary way. It allows you to agree in advance what belongs to whom, what is to be shared, how the household is to be run, what happens if the relationship ends and what happens if one of you dies. It is not a substitute for a marriage, and it cannot give you everything that marriage gives, but it can give you a great deal of it, and it does so on terms which the two of you choose rather than terms imposed by a statute.

We are conscious that this is a conversation which some couples find difficult to have. Agreeing in advance what should happen if things go wrong can feel like an expression of doubt. It is not. It is the same instinct that leads people to insure a house they have every intention of keeping. In our experience couples who work through these questions together generally find the exercise clarifying rather than uncomfortable.

## WHAT A LIFE PARTNERSHIP IS, AND WHAT IT IS NOT

A permanent life partnership is a relationship between two people who live together on a permanent basis in a manner which resembles a marriage, and who have undertaken reciprocal duties of support towards one another. It does not depend on the sex of the partners, and it does not depend on how long the relationship has lasted, although duration is one of the things a court will look at.

It is not a marriage, and an agreement between you cannot make it one. You will not acquire a matrimonial property regime, your partner will not automatically become your spouse for every legal purpose, and third parties — a bank, a medical scheme, an employer — are not bound by your agreement with one another. What the agreement does is regulate the relationship between the two of you, and that is where most of the difficulty in these relationships actually arises.

Where there is no agreement, a partner seeking a share of what was built up must ordinarily rely on the common law of universal partnership. That requires proof that the two of you carried on something in the nature of a joint enterprise, that each contributed to it, that it was conducted for the joint benefit of both, and that the object was to make a profit. It is a claim which can succeed, and our courts have upheld such claims where the contribution took the form of running a home rather than earning an income, but it is litigated after the relationship has broken down, it is expensive, and its outcome is uncertain. An agreement removes the need for it.

## WHERE THE LAW NOW STANDS

The position of life partners has changed considerably over the past two decades, and it is worth understanding what has changed and what has not.

The Constitutional Court held in Bwanya v Master of the High Court that it was unconstitutional to exclude the survivor of a permanent life partnership, in which the partners had undertaken reciprocal duties of support, from the Intestate Succession Act and from the Maintenance of Surviving Spouses Act. The consequence is that a surviving life partner may now inherit on intestacy and may claim maintenance from the estate of the deceased partner, where the relationship meets that description. The Court suspended its order to allow Parliament to enact remedial legislation, and that period has since expired. Earlier decisions had already extended intestate succession to same-sex partners. Our courts have also recognised a life partner's claim for loss of support arising from the death of a partner where a contractual duty of support existed between them.

Other statutes had gone further, earlier. Life partners are treated as dependants for the purposes of the distribution of retirement fund death benefits where dependency is shown. The Domestic Violence Act applies to partners who share a residence, whether married or not. The Children's Act regulates parental responsibilities and rights without regard to the marital status of the parents.

What has not changed is the position during the relationship and on its breakdown while both partners are alive. There is still no statute which divides property between life partners who separate, no statute which obliges one to maintain the other, and no equivalent of a divorce. The Domestic Partnerships Bill, which would have addressed this, has never been enacted. That gap is precisely what your agreement is there to fill, and it is the reason this document exists.

One caution. This is an area in which the law has moved and may move again, and the position of a surviving partner on intestacy in particular depends upon the facts of the relationship being accepted. Do not rely upon it in place of a will. Every couple who signs a life partnership agreement should sign a will at the same time.

## THE PRINCIPAL STEPS

**Consultation and instructions.** We explain what the agreement can and cannot do, and establish what the two of you wish to achieve. Where our acting for both of you would create a conflict, we shall say so and one of you should take separate advice.

**Talking it through together.** The two of you work through this questionnaire. It is usually best done together, and it is often the most valuable part of the exercise.

**Disclosure.** Each partner discloses what he or she owns and owes. An agreement concluded without full disclosure is vulnerable to attack later.

**Drafting the agreement.** We prepare the agreement dealing with property, contributions, the household, maintenance, children, separation and death.

**Signature.** The agreement is signed by both partners and witnessed. Each partner should have had the opportunity to take independent advice before signing.

**Wills and nominations.** Wills are prepared for both partners, and the beneficiary nominations on policies and retirement funds are brought into line with the agreement.

**Putting it into effect.** Joint accounts, the registration of property, bond applications, medical scheme dependency and powers of attorney are attended to so that the paperwork matches the agreement.

**Review.** The agreement is revisited when circumstances change — a child, a house, a business, a change in either partner's income.

**If the relationship ends.** The agreement determines how assets are divided and what support, if any, is payable. Arrangements for the children are made in accordance with the Children's Act.

**Enforcement.** The agreement is enforced as an ordinary contract. Where the parties have agreed to mediation or arbitration, the dispute goes there first.

## PART A: YOUR PARTICULARS

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| **Full names and surname** | |
| **Identity number (or passport number and nationality)** | |
| **Date of birth** | |
| **Residential address** | |
| **Cellphone number** | |
| **E-mail address** | |
| **Occupation and employer** | |
| **Income tax reference number** | |
| **Have you been married before? If so, how was the marriage dissolved, and do any obligations survive it?** | |

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| **Do you have any obligation to maintain a former spouse or any child of an earlier relationship?** | |
| **Preferred language (English / Afrikaans / other)** | |

## PART B: YOUR PARTNER'S PARTICULARS

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|---|---|
| **Full names and surname** | |
| **Identity number (or passport number and nationality)** | |
| **Date of birth** | |
| **Occupation and employer** | |
| **Cellphone number and e-mail address** | |
| **Has your partner been married before? Are there obligations arising from it?** | |
| **Does your partner have children of an earlier relationship?** | |
| **Are we instructed by both of you jointly, or by you alone? (If jointly, please note that we cannot advise each of you separately if your interests diverge)** | |
| **Has your partner had the opportunity to take independent legal advice?** | |

## PART C: THE RELATIONSHIP

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| **When did the relationship commence?** | |
| **Since when have you lived together, and at what address?** | |
| **Do you intend the relationship to be permanent?** | |
| **Do you intend to marry at some future date?** | |
| **Do you support one another financially, and in what way?** | |
| **Are you regarded by family, friends and colleagues as a couple?** | |
| **Have you referred to one another as spouses or partners on any form, policy, medical scheme or employer's record?** | |

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| **Is either of you still married to somebody else? (This is important, and affects what the agreement may lawfully provide)** | |

## PART D: CHILDREN

| Full names | Date of birth | Parents | With whom does the child live? |
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| **Are there children born of this relationship?** | |
| **Are the particulars of the father recorded on each birth certificate?** | |
| **Does the father have parental responsibilities and rights? (An unmarried father acquires them in the circumstances set out in the Children's Act, and a parental responsibilities and rights agreement may be advisable)** | |
| **Are there children of either partner from an earlier relationship living in the household?** | |
| **How are the costs of the children shared between you?** | |
| **Do you wish a parenting plan to be prepared, setting out care, contact and maintenance if the relationship should end?** | |
| **Whom do you nominate as guardian of the children in the event of the death of both parents?** | |

## PART E: PROPERTY AND ASSETS

*Set out what each of you brought into the relationship, and what has been acquired since. Full disclosure protects the agreement against a later attack.*

| Asset | Value (R) | Registered in whose name | Acquired before or during the relationship |
|---|---|---|---|
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| Asset | Value (R) | Registered in whose name | Acquired before or during the relationship |
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| **Do you own the home in which you live, or is it rented? In whose name?** | |
| **If it is owned by one of you, did the other contribute to the purchase price, the bond, the rates or the improvements? Give particulars** | |
| **If it is owned jointly, in what shares, and who pays the bond?** | |
| **If it is rented, whose name is on the lease?** | |
| **What is to happen to the home if the relationship ends — should one of you be entitled to remain, to buy the other out, or should it be sold?** | |
| **Is either of you subject to a bond or credit agreement for which the other has signed surety?** | |
| **Are there assets you wish to keep entirely separate, so that the other has no claim to them?** | |
| **Are there assets you wish to treat as jointly owned, whatever the registration may say?** | |

## PART F: FINANCIAL ARRANGEMENTS DURING THE RELATIONSHIP

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| **What is each partner's monthly income?** | |
| **How are the household expenses presently shared — equally, in proportion to income, or in some other way?** | |
| **Is there a joint bank account? Who contributes to it and who may draw on it?** | |

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| **Is one partner financially dependent on the other, and to what extent?** | |
| **Has either partner given up employment, study or a career for the sake of the relationship or the children?** | |
| **Does either partner work in the other's business, and is that person paid for it?** | |
| **Has either partner lent money to the other, or paid a debt of the other?** | |
| **How are savings and investments to be treated?** | |
| **Are you to share in the growth of one another's assets during the relationship, in the way an accrual system would provide?** | |

## PART G: SUPPORT AND MAINTENANCE

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| **Do you wish to record a reciprocal duty of support between you during the relationship? (This matters for several purposes, including a claim by a survivor after death)** | |
| **Should either partner be obliged to maintain the other if the relationship ends? On what basis, in what amount and for how long?** | |
| **Should maintenance cease if the recipient remarries or enters a new life partnership?** | |
| **Should either partner be obliged to maintain the other during a period of illness or incapacity?** | |
| **Is either partner a dependant on the other's medical scheme, and what should happen to that on separation?** | |

## PART H: IF THE RELATIONSHIP COMES TO AN END

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| **What notice should a partner give of an intention to end the relationship?** | |
| **How should the assets be divided?** | |

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| **Should assets acquired during the relationship be shared equally, or in proportion to contribution?** | |
| **How should household contents and furniture be dealt with?** | |
| **Who should be entitled to remain in the home, and for how long?** | |
| **How should joint debts be dealt with?** | |
| **Should there be a valuation mechanism, and who should carry it out?** | |
| **Should there be a cooling-off period or a requirement of counselling before the agreement is terminated?** | |
| **What is to happen to pets?** | |

## PART I: IF ONE OF YOU DIES

*This is the part which couples most often leave undone, and the consequences of leaving it undone fall on the survivor at the worst possible time.*

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| **Has either of you made a will? When, and does it provide for the other?** | |
| **Do you require wills to be prepared for both of you? (We recommend that this be done at the same time as the agreement)** | |
| **Should the survivor be entitled to remain in the common home, and for how long?** | |
| **Are there life policies, and who is nominated as beneficiary on each?** | |
| **Have you completed a nomination of beneficiary form for your retirement fund, and does it name your partner? (The trustees of the fund are obliged to consider actual dependency and are not bound by the form)** | |
| **Do you wish to grant one another a power of attorney, or to record who may** | |

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| **take medical decisions if one of you cannot?** | |
| **Do you wish to record your funeral wishes, and who is to make the arrangements?** | |

## PART J: DISPUTE RESOLUTION

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| **Should a dispute between you first be referred to mediation?** | |
| **Should disputes be determined by arbitration rather than by a court?** | |
| **Which court should have jurisdiction?** | |
| **Should the agreement be capable of amendment only in writing and signed by both of you?** | |
| **When should the agreement be reviewed?** | |

## PART K: OTHER DOCUMENTS REQUIRED

**Mark those documents which you would like us to prepare:**

| Document | Mark with an X |
|---|---|
| Life partnership or cohabitation agreement | |
| Will for each partner | |
| Parenting plan | |
| Parental responsibilities and rights agreement for an unmarried father | |
| Co-ownership agreement for jointly held property | |
| Loan agreement or acknowledgement of debt between the partners | |
| General power of attorney | |
| Living will or advance medical directive | |
| Nomination of guardian for minor children | |
| Amendment of beneficiary nominations on policies and funds | |
| Antenuptial contract, should you decide to marry | |
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## PART L: ANY OTHER INFORMATION

Please set out anything else you consider relevant, including anything you would prefer to discuss with us by telephone rather than record here. If there is any matter on which the two of you do not agree, please say so — it is far better that we know now.

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## PART M: DECLARATION BY THE CLIENT

I, the undersigned, confirm that the information furnished in this questionnaire is true and correct to the best of my knowledge and belief, and that I have disclosed my assets and liabilities fully. I instruct Otto Krause Incorporated to act upon it in the preparation of a life partnership agreement. I understand that such an agreement does not constitute a marriage and does not confer the status of a spouse for every legal purpose, and that I have been advised to make a will.

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| **Full names** | |
| **Signature (you may type your name here and sign the printed copy at our offices, or attach a scanned signature)** | |
| **Place** | |
| **Date** | |

## ANNEXURE: DOCUMENTS TO BE FORWARDED IN DUE COURSE

| Document | Available? (Yes / No / Will obtain) |
|---|---|
| Identity documents of both partners | |
| Birth certificates of any children | |
| Title deed of the common home, or the lease | |
| Bond statement and details of the bond account | |
| Proof of income of both partners | |
| Bank statements for any joint account | |
| Policy schedules and beneficiary nomination forms | |
| Retirement fund statements and nomination forms | |
| Medical scheme membership details | |
| Any existing will of either partner | |
| Divorce order of either partner, where applicable | |
| Any agreement already signed between the two of you | |
| Statements of significant assets and liabilities of each partner | |
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