

Domestic Partnership Agreements: Support upon Termination of the Relationship

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This is the fourth installment of

a seven-part series by Michael P. Sampson and Edith G. Osman Florida law generally provides, when there is no premarital agreement, a marrying person's right to alimony depends on the person's need for alimony and the other party's ability to pay. Although Florida courts will honor common law marriages validly established in other states, Florida itself no longer has common law marriage. Florida law provides no support (or "palimony") for couples who remain unmarried. But domestic partnership agreements may establish contractual rights and obligations for support that otherwise would be unavailable unless the parties were to marry. There are many ways to structure support, but most have in common providing for a fair amount based on the length of the relationship and the parties' anticipated respective financial positions if their relationship were to end. Parties may consider, among many alternatives:

Option 1 – provide for nonmodifiable payments to be made. The amount could vary based on the length of the relationship. Agreements may provide different amounts of support to the partner if there are children of the relationship. Option 2 – provide for a fixed amount of support, e.g., (a) for 2 years if the relationship is under 7 years; (b) for 4 years if the relationship is more than 7 and but less than or equal to 12 years; (c) for 10

years if the relationship is more than 12 and but less than or equal to 18 years; (d) for the provision to be void if the parties are together more than 18 years. Option 3 – provide for a percentage of support based on each party’s prior year’s gross taxable income. Under this option, the payment schedule could be as in Option 2, but the amount, rather than being fixed, would be calculated by taking a percentage of each party’s prior year’s gross taxable income less a percentage of the needier party’s prior year’s gross taxable income, then dividing by 12 months. For example, if the greater money earner’s gross income for the prior year was \$100,000 and the partner’s gross income were \$30,000, annual support could be $(30\% \times \$100,000) - (20\% \times \$30,000)$, or \$24,000, and monthly support would be \$2,000.

Taxation - Unless support payments are from one spouse (or ex-spouse) to the other, the IRS does not treat the payments as taxable income to the recipient or deductible “alimony” by the payor. See [IRS Publication 504](#), which states, unmarried domestic partners (who are not considered “common law married”) can’t file joint U.S. tax returns, but may file only individual 1040 tax returns. Individuals who have entered into registered domestic partnerships, civil unions, or other similar relationships that are not called a marriage under state (or foreign) law are not married for federal tax purposes. But the parties could calculate and make financial agreements to allocate the net tax benefit if they were to treat such payments as taxable income to the recipient and deductible by the payor. *Our next segment will discuss [domestic partnership agreements and death](#).*

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