

## Death and legal family formats in Malta

by Clara Galea Borg <sup>1</sup>

*The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*

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Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 6 – Death)

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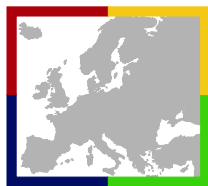
<sup>3</sup> Institut national d'études démographiques, Paris, France, [www.ined.fr](http://www.ined.fr).



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# FamiliesAndSocieties

## Disclaimer

This paper and this database contain information with a scientific aim. Nothing in this paper and in this database should be seen as legal advice. Not all nuances and exceptions are included, and there may be errors and further legal developments. The experts, the authors, the editors, the Institut national d'études démographiques and Leiden University cannot be held liable for any inaccurate or incomplete information in this paper or in this database. More particularly, they cannot be held liable for any damage or consequences from the direct or indirect use of contents of this paper or database.

## The six sections of the questionnaire

The [interactive LawsAndFamilies Database](#) is based on the [LawsAndFamilies questionnaire](#), which consists of six sections:

- Section 1 – Formalisation
- Section 2 – Income and troubles
- Section 3 – Parenting
- Section 4 – Migration
- Section 5 – Splitting up
- Section 6 – Death

## Papers and an interactive database

For each jurisdiction there are therefore six papers like this one. And each of these papers contains the full answers, references and explanations (given by

a legal expert for the jurisdiction concerned) to the questions in one of these six sections. All these papers can be found in open access at [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu). There the user also has access to the [interactive part of the LawsAndFamilies Database](#), which can be used to search the whole database and to create comparative overviews for different questions, different years, different countries and/or different legal family formats.

This website also contains references to publications analysing the results of the project, and to some other legal, sociological and statistical publications about same-sex and different-sex families. And it gives information about the methodology used for this questionnaire and database.

## About the questionnaire

The [full text of the questionnaire](#) can be found in the paper: K. Waaldijk, J.M. Lorenzo Villaverde, N. Nikolina & G. Zago, 'The LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples: Text of the questions and of the accompanying guidance document', *FamiliesAndSocieties Working Paper* 64(2016), [www.familiesandsocieties.eu](http://www.familiesandsocieties.eu).

The [Guidance document](#) contained in that paper, asked the experts answering the questionnaire to make several assumptions. These included the assumption that the partners have been living together as a couple already for at least two years. Plus the assumption (except for certain questions in Section 4 – Migration) that both partners have the citizenship of the country where they are now both lawfully and habitually residing, and that this is also the country where their relationship would have been formalised and where it would be dissolved.

## About the answers

This paper contains the answers, references and explanations – for one jurisdiction – to all questions in one of the six sections of the questionnaire. The answers are presented in columns. Each column is a coloured timeline, representing legal developments for one question for one legal family format.

The year at the top of each coloured timeline is the most recent year for which a question was answered by the author. In the timelines the years given above and below an answer indicate that the answer applied between a certain day in the lower year and a certain day in the higher year. The year "0000" means that the answer applied since an unknown year before 1965. See further the [Guidance document](#).

The following **answer codes and colours** have been used:

Yes	Yes, this is so in the law of this country/jurisdiction, although possibly with a qualifying period of 24 months or less.
Yes, but	Yes, but with exceptions or restrictions, for example a qualifying period of 25 months or more, or only in most parts of the country/jurisdiction, or this is mostly a “dead letter”.
No, but	No, but it may be so exceptionally, or in a very limited way, or in a few parts of the country/jurisdiction, or indirectly, or by using a different legal instrument, or legislation says no while some courts might say yes.
No	No, this is not so in the law of this country/jurisdiction.
Doubt	The law is unclear (the law does not “know” the answer).
?	No information was available.
N/A	Not applicable (for example because this family format is not available in this jurisdiction, or not for same-sex or different-sex couples).
X	This question was not asked for this legal family format.
Open question	Question without answer codes like Yes and No.
Empty cell	For this year the question was not asked or not answered.

### The six papers about Malta

The answers concerning Malta can be found in the [interactive database](#) and in the following six papers (all of which are published in open access in: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu)):

#### Formalisation of legal family formats in Malta by Christian Attard (Section 1)

#### Income, troubles and legal family formats in Malta by Clara Galea Borg (Section 2)

#### Parenting and legal family formats in Malta by Christian Attard (Section 3)

#### Migration and legal family formats in Malta by Christian Attard (Section 4)

#### Splitting up and legal family formats in Malta by Clara Galea Borg (Section 5)

#### Death and legal family formats in Malta by Clara Galea Borg (Section 6)

So this paper is based on **Section 6 (Death)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

#### 6.1 Tenancy continuation

#### 6.2 Property at death

#### 6.3 Inheritance

#### 6.4 Inheritance tax

#### 6.5 Survivor’s pension

#### 6.6 Wrongful death

#### 6.7 General background regarding death

In the following pages of this paper, first the answer to question 6.7 is presented, followed by the answers to questions 6.1 to 6.6.

#### **6.07 - General background regarding death (Open question)**

If you consider it useful to provide some general information or comments about (past, present or future) developments and trends in legal policy and case law in your country/jurisdiction, or information on other aspects (socio-legal, political, legal-cultural, etc.) that may be relevant for the understanding your answers above regarding death, then please do so here.

**With regard to questions 6.01 and 6.03 on 'Tenancy continuation' and 'Inheritance' respectively, article 633 (1) of the Civil Code (Chap. 16 of the Laws of Malta) expressly provides that the surviving spouse enjoys the right of habitation over the property occupied as the principal residence by the said surviving spouse at the time of the death of the predeceased spouse, where the same tenement is held in full ownership or emphyteusis by the deceased spouse either alone or jointly with the surviving spouse. The clause only mentions 'ownership' or 'emphyteusis' which therefore leads to the conclusion that the right of habitation does not subsist in the case that the matrimonial home is leased from third parties. Emphyteusis is a form of 'quasi-ownership' of property. It is a hybrid between full ownership and lease. It was common a number of years ago but is no longer that common. The owner, 'the directum dominus', grants the property on emphyteusis to the emphyteuta. The emphyteuta can use the property as his own subject to the payment of a groundrent to the directum dominus. Unlike rent, the groundrent is normally a nominal fee payable to the dominus as recognition of title and the Dominus has no obligations regarding the property's state, condition or maintenance. In fact, these obligations fall to the emphyteusis who must use the property diligently and ensure that it does not deteriorate. Emphyteusis are normally granted for a long period of time (50/100 years) and in certain cases the emphyteuta may 'redeem' the emphyteusis acquiring the dominus' share.**

Jurisdiction: **Malta**

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Section: **6 - Death**

Question: **6.01 - Tenancy continuation**

When the partner who holds the rental contract dies, does the other partner then have a right to continue to rent the home?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes, but 1995	2015 N/A 0000	2015 Yes, but 2014	2015 Yes, but 2014	2015 Yes, but 0000	2015 Yes, but 0000
Yes 0000		N/A 0000	N/A 0000		
<p><b>References to legal sources:</b> Article 1572 of the Civil Code (Chap. 16 of the Laws of Malta) enacted on 11th February 1870 as amended by Act X of 2009 of 19th June 2009.</p>		<p><b>References to legal sources:</b> Article 1572 of the Civil Code (Chap. 16 of the Laws of Malta) enacted on 11th February 1870, as amended by Act X of 2009 of 19th June 2009, rendered applicable to Civil Unions Act (Chap. 530 of the Laws of Malta) by virtue of Article 4(1) thereof enacted on the 14th April 2014.</p>		<p><b>References to legal sources:</b></p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Article 1572 of the Civil Code provides that a contract of letting and hiring is not dissolved by the death of the lessor and lessee. This implies that the right is transferred to the heirs at law /testamentary heirs of the deceased. However, this can be excluded in the contract of lease.</p> <p>Different rules applied in relation to leases entered into before 1st June 1995. Those leases could be passed on (on the same terms and conditions) from the tenant to the persons living with him/her at the time of death ad infinitum. This resulted in an unjust situation for the landlord. Therefore, Act X of 2009 was implemented and provides specific rules regarding who can inherit a lease after the demise of the tenant under a contract of lease entered into before 1st June 1995. This amendment is intended to phase out the right to inherit the lease indefinitely.</p>		<p><b>Explanations and nuances:</b>                      If the civil union partner is the heir of the deceased, then he/she would be entitled to continue the lease in his/her capacity as heir unless the right to inherit the lease is excluded in the contract of lease.</p>		<p><b>Explanations and nuances:</b>                      If the cohabiting partner is the heir of the deceased, then he/she would be entitled to continue the lease in his/her capacity as heir unless the right to inherit the lease is excluded in the contract of lease.</p>	

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Section: **6 - Death**

Question: **6.02 - Property at death**

When one partner dies, do statutory rules consider as joint property any possessions acquired by either of them after they started this type of relationship? (In other words: would the surviving partner be deemed to own 50% of these possessions, while the other 50% are subject to relevant rules of inheritance law?)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes, but 0000	2015 N/A 0000	2015 Yes, but 2014	2015 Yes, but 2014	2015 No 0000	2015 No 0000
		N/A 0000	N/A 0000		
<p><b>References to legal sources:</b>                      Article 1316 of the Civil Code (Chap. 16 of the Laws of Malta) enacted on the 11th February 1870                      Article 1333 of the Civil Code, (Chap. 16 of the Laws of Malta) enacted on the 11th February 1870.</p>		<p><b>References to legal sources:</b>                      Article 1316 and 1333 of the Civil Code (Chap. 16 of the Laws of Malta) enacted on the 11th February 1870, rendered applicable to Civil Unions by virtue of Article 4(1) of the Civil Unions Act (Chap. 530 of the Laws of Malta) enacted on the 14th April 2014.</p>		<p><b>References to legal sources:</b></p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      In terms of Maltese law a marriage celebrated in Malta automatically produces the community of acquests between the spouses. This means that any property acquired by the spouses after marriage is considered joint property and upon the demise of either spouse the property belonging to the community of acquests is partitioned, 50% to the surviving spouse and the remaining 50% to the heirs of the deceased spouse. The spouses may exclude the application of the Community of Acquests by entering into a public deed to this effect prior to contracting marriage and opting for Separate Administration or the Community of Residue under Separate Administration. Upon the demise of either spouse, ownership over the property would be determined in accordance with the applicable matrimonial regime.</p>		<p><b>Explanations and nuances:</b>                      Since the relevant provisions relating to marriage also apply to Civil Unions, a Civil Union celebrated in Malta automatically produces the community of acquests between the partners. This means that any property acquired by the partners after the Civil Union is considered joint property and upon the demise of either of the partners the property belonging to the community of acquests is partitioned, 50% to the surviving partner and the remaining 50% to the heirs of the deceased Partner. The civil union partners may exclude the application of the Community of Acquests by entering into a public deed to this effect prior to contracting the Civil Union and opting for Separate Administration or the Community of Residue under Separate Administration. Upon the demise of either partner, ownership over the property would be determined in accordance with the applicable matrimonial regime.</p>		<p><b>Explanations and nuances:</b></p>	



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Section: **6 - Death**

Question: **6.03 - Inheritance**

When one partner dies without testament, is the other partner then an inheritor?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 N/A 0000	2015 Yes 2014	2015 Yes 2014	2015 No 0000	2015 No 0000
		N/A 0000	N/A 0000		
<b>References to legal sources:</b> Article 808 of the Civil Code (Chap. 16 of the Laws of Malta) enacted on the 11th February 1870.		<b>References to legal sources:</b> Article 808 of the Civil Code (Chap. 16 of the Laws of Malta) enacted on the 11th February 1870, rendered applicable to Civil Unions by virtue of Article 4(1) of the Civil Unions Act (Chap. 530 of the Laws of Malta) enacted on the 14th April 2014.		<b>References to legal sources:</b>	
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>	

Jurisdiction: **Malta**

Source: **C. Galea Borg**, "Death and legal family formats in Malta". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-MT-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: **6 - Death**

Question: **6.04 - Inheritance tax**

Is the surviving partner exempted from paying inheritance tax (or required to pay less than a mere friend would have to pay)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes, but 0000	2015 N/A 0000	2015 Yes, but 2014	2015 Yes, but 2014	2015 Yes, but 0000	2015 Yes, but 0000
		N/A 0000	N/A 0000		
References to legal sources:		References to legal sources:		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      No inheritance tax applies in Malta. However, a person receiving immoveable property in Malta by transfer causa mortis must enter a declaration of such transfer. He/she is then charged a fiscal 'duty on documents' on the value of the immoveable property as stated in the declaration causa mortis. No duty applies on a portion of the value of the property when the succession relates to immoveable property being the deceased's sole ordinary residence at the time of death and the duty is reduced from standard rate where the heir was resident in the same property at the time of the decease of the testator.</p>		<p><b>Explanations and nuances:</b>                      No inheritance tax applies in Malta. However, a person receiving immoveable property in Malta by transfer causa mortis must enter a declaration of such transfer. He/she is then charged a fiscal 'duty on documents' on the value of the immoveable property as stated in the declaration causa mortis. No duty applies on a portion of the value of the property when the succession relates to immoveable property being the deceased's sole ordinary residence at the time of death and the duty is reduced from standard rate where the heir was resident in the same property at the time of the decease of the testator.</p>		<p><b>Explanations and nuances:</b>                      No inheritance tax applies in Malta. However, a person receiving immoveable property in Malta by transfer causa mortis must enter a declaration of such transfer. He/she is then charged a fiscal 'duty on documents' on the value of the immoveable property as stated in the declaration causa mortis. No duty applies on a portion of the value of the property when the succession relates to immoveable property being the deceased's sole ordinary residence at the time of death and the duty is reduced from standard rate where the heir was resident in the same property at the time of the decease of the testator.</p>	

Jurisdiction: **Malta**

Source: **C. Galea Borg**, "Death and legal family formats in Malta". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-MT-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: **6 - Death**

Question: **6.05 - Survivor's pension**

When one partner dies while being employed, is the surviving partner then normally entitled to a survivor's pension?

(For example on the basis of statutory law, and/or on the basis of a collective labour agreement or arrangements of the employer.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes, but 1987	2015 N/A 0000	2015 Yes, but 2014	2015 Yes, but 2014	2015 No 0000	2015 No 0000
? 0000		N/A 0000	N/A 0000		
<p><b>References to legal sources:</b> Articles 31 to 43 of the Social Security Act (Chap. 318 of the Laws of Malta) enacted on the 1st January 1987.</p>		<p><b>References to legal sources:</b> Articles 31 to 43 of the Social Security Act (Chap. 318 of the Laws of Malta) enacted on the 1st January 1987, rendered applicable to Civil Unions by virtue of Article 4(1) of the Civil Unions Act (Chap. 530 of the Laws of Malta) of the 14th April 2014.</p>		<p><b>References to legal sources:</b></p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      The widow/widower is entitled to a pension under the national insurance scheme provided the deceased complied with the relevant contribution conditions.</p>		<p><b>Explanations and nuances:</b>                      The surviving partner is entitled to a pension under the national insurance scheme provided the deceased complied with the relevant contribution conditions.</p>		<p><b>Explanations and nuances:</b></p>	

Jurisdiction: **Malta**

Source: **C. Galea Borg**, "Death and legal family formats in Malta". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-MT-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: **6 - Death**

Question: **6.06 - Wrongful death**

In case of wrongful death of one partner, is the other partner then entitled to compensation from the wrongdoer?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 N/A 0000	2015 Yes 2014	2015 Yes 2014	2015 Yes, but 0000	2015 Yes, but 0000
		N/A 0000	N/A 0000		
<p><b>References to legal sources:</b> Article 1046 of the Civil Code (Chap. 16 of the Laws of Malta) enacted on the 11th February 1870.</p>		<p><b>References to legal sources:</b> Article 1046 of the Civil Code (Chap. 16 of the Laws of Malta) enacted on the 11th February 1870, rendered applicable to Civil Unions by virtue of Article 4(1) of the Civil Unions Act (Chap. 530 of the Laws of Malta) enacted on the 14th April 2014.</p>		<p><b>References to legal sources:</b> Article 1046 of the Civil Code (Chap. 16 of the Laws of Malta) enacted on the 11th February 1870.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            The right to receive compensation from the wrongdoer vests in the heirs of the injured party. Therefore, unless the surviving spouse is disinherited he/she would be entitled to claim compensation together with the other heirs of the deceased party if any.</p>		<p><b>Explanations and nuances:</b>            The right to receive compensation from the wrongdoer vests in the heirs of the injured party. Therefore, unless the surviving partner is disinherited he/she would be entitled to claim compensation together with the other heirs of the deceased party (if any).</p>		<p><b>Explanations and nuances:</b>            This right vests in the cohabiting partner only if he/she is also named as the heir of the deceased cohabiting partner. The right does not automatically vest in him/her qua cohabiting partner.</p>	