

## Death and legal family formats in Austria

by Helmut Graupner<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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# 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 Austria

The answers concerning Austria 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 Austria by Helmut Graupner (Section 1)

#### Income, troubles and legal family formats in Austria by Helmut Graupner (Section 2)

#### Parenting and legal family formats in Austria by Helmut Graupner (Section 3)

#### Migration and legal family formats in Austria by Helmut Graupner (Section 4)

#### Splitting up and legal family formats in Austria by Helmut Graupner (Section 5)

#### Death and legal family formats in Austria by Helmut Graupner (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.

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Jurisdiction: **Austria**

Source: **H. Graupner**, "Death and legal family formats in Austria". 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-AT-Section6.pdf](#) (please use this full citation when citing any information from this table).

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
2016 Yes 1929	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	2016 Yes 1968	2016 Yes 2003
			N/A 0000	No 0000	No 0000
<p><b>References to legal sources:</b> Art. 14(3) Mietrechtsgesetz(Tenancy Law Act) (Bundesgesetzblatt 1981, Nr. 520, in force from 1 January 1982).</p> <p>Art. 19(2)(11) Mietengesetz (Tenancy Act) (Bundesgesetzblatt 1929, Nr. 210, in force from 1 July 1929).</p>		<p><b>References to legal sources:</b> Art. 14(3) Mietrechtsgesetz(Tenancy Law Act) (Bundesgesetzblatt 1981, Nr. 520, in force from 1 January 1982).</p> <p>Art. 43(1)(10) Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).</p>		<p><b>References to legal sources:</b> Art. 14(3) Mietrechtsgesetz(Tenancy Law Act) (Bundesgesetzblatt 1981, Nr. 520, in force from 1 January 1982).</p> <p>Art. 19(2)(11) Mietengesetz (Tenancy Act) (Bundesgesetzblatt 1967, Nr. 281, in force from 1 January 1968).</p>	
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>	

Jurisdiction: **Austria**

Source: **H. Graupner**, "Death and legal family formats in Austria". 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-AT-Section6.pdf](#) (please use this full citation when citing any information from this table).

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
2016 No, but 0000	2016 N/A 0000	2016 N/A 0000	2016 No, but 2010	2016 No 0000	2016 No 0000
			N/A 0000		
<p><b>References to legal sources:</b> Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812).</p> <p>Ehegesetz (Marriage Act) (deutsches Reichsgesetzblatt 1938 I page 807, in force from 1 August 1938).</p>		<p><b>References to legal sources:</b> Eingetragene Partnerschaft-Gesetz (Registered Partnership Act) (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).</p>		<p><b>References to legal sources:</b> Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812).</p>	
<p><b>Explanations and nuances:</b> Joint property can be established by contract.</p>		<p><b>Explanations and nuances:</b> Joint property can be established by contract.</p>		<p><b>Explanations and nuances:</b></p>	

Jurisdiction: **Austria**

Source: **H. Graupner**, "Death and legal family formats in Austria". 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-AT-Section6.pdf](#) (please use this full citation when citing any information from this table).

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
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	2016 No 0000	2016 No 0000
			N/A 0000		
<b>References to legal sources:</b> Art. 757, 758 Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812).		<b>References to legal sources:</b> Art. 537a & 757, 758 Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812) as amended by law of 30 December 2009 (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010).		<b>References to legal sources:</b> Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812).	
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>	

Jurisdiction: **Austria**

Source: **H. Graupner**, "Death and legal family formats in Austria". 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-AT-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
2016 Yes, but 2007	2016 N/A 0000	2016 N/A 0000	2016 Yes, but 2010	2016 Yes, but 2007	2016 Yes, but 2007
Yes 0000			N/A 0000	No 0000	No 0000
References to legal sources:		References to legal sources:		References to legal sources:	
Explanations and nuances: Since 2007 no inheritance tax in Austria.		Explanations and nuances: Since 2007 no inheritance tax in Austria.		Explanations and nuances: Since 2007 no inheritance tax in Austria.	

Jurisdiction: **Austria**

Source: **H. Graupner**, "Death and legal family formats in Austria". 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-AT-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
2016 Yes 1980	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	2016 No 0000	2016 No 0000
Yes, but 0000			N/A 0000		
<p><b>References to legal sources:</b> Art. 258 Allgemeines Sozialversicherungsgesetz (General Social Insurance Act) as amended by law of 30 December 2009 (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010); and numerous other social insurance legislation.</p>		<p><b>References to legal sources:</b> Art. 258 &amp; 259 Allgemeines Sozialversicherungsgesetz (General Social Insurance Act) as amended by law of 30 December 2009 (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010); and numerous other social insurance legislation.</p>		<p><b>References to legal sources:</b> Allgemeines Sozialversicherungsgesetz (General Social Insurance Act) as amended by law of 30 December 2009 (Bundesgesetzblatt 2009, Nr. I 135, in force from 1 January 2010); and numerous other social insurance legislation.</p>	
<p><b>Explanations and nuances:</b> The husband has been equally entitled to a survivor's pension since 1980.</p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b></p>	

Jurisdiction: **Austria**

Source: **H. Graupner**, "Death and legal family formats in Austria". 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-AT-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
2016 Yes 1917	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	2016 No 0000	2016 No 0000
? 0000			N/A 0000		
<p><b>References to legal sources:</b> Art. 1327 Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812) as amended by law of 19 March 1916 (Reichsgesetzblatt 1916, Nr. 69, in force from 1 January 1917); and Art 1325 Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812). Trauerschmerzensgeld (compensation for personal suffering).</p>		<p><b>References to legal sources:</b> Art. 1327 Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812) as amended by law of 19 March 1916 (Reichsgesetzblatt 1916, Nr. 69, in force from 1 January 1917); and Art 1325 Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812). Trauerschmerzensgeld (compensation for personal suffering).</p>		<p><b>References to legal sources:</b> Art. 1327 Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812) as amended by law of 19 March 1916 (Reichsgesetzblatt 1916, Nr. 69, in force from 1 January 1917); and Art 1325 Allgemeines Bürgerliches Gesetzbuch (General Civil Code) (Justizgesetzsammlung 1811, Nr. 946, in force from 1 January 1812). Trauerschmerzensgeld (compensation for personal suffering).</p>	
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b>	