

## Death and legal family formats in Germany

By Laura Adamietz <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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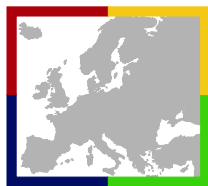
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# FamiliesAndSocieties

## Disclaimer

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## 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 Germany

The answers concerning Germany 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 Germany**  
by Laura Adamietz (Section 1)

**Income, troubles and legal family formats in Germany**  
by Laura Adamietz (Section 2)

**Parenting and legal family formats in Germany**  
by Nora Markard (Section 3)

**Migration and legal family formats in Germany**  
by Nora Markard (Section 4)

**Splitting up and legal family formats in Germany**  
by Laura Adamietz (Section 5)

**Death and legal family formats in Germany**  
by Laura Adamietz (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.

**The case of Maruko (Court of Justice EU 1 April 2008 - 267/06) was the turning point for the discrimination of life partnerships in Germany. Many Länder changed their pension laws after that, on the federal level the necessary amendments took place only after the Federal Constitutional Court embraced the CJEU's view in its decision of 7 July 2009 (1 BvL 1/11, see questions 6.5).**

Jurisdiction: **Germany**

Source: L. Adamietz, "Death and legal family formats in Germany". 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-DE-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
2015 Yes 0000	2015 N/A 0000	2015 N/A 0000	2015 Yes 2001	2015 Yes 1993	2015 Yes 2001
			N/A 0000	No 0000	No 0000
<b>References to legal sources:</b> Art. 563 Bürgerliches Gesetzbuch - Civil Code.		<b>References to legal sources:</b> Art. 563 Bürgerliches Gesetzbuch - Civil Code.		<b>References to legal sources:</b> BGH, judgment of 13 January 1993 – VIII ARZ 6/92, BGHZ 121, 116.  Art. 563(2) cl. 4 Bürgerliches Gesetzbuch – Civil Code.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            Upon death of the lessee the surviving spouse becomes automatically a party to the rental contract.</p>		<p><b>Explanations and nuances:</b>            Upon death of the lessee the surviving Partner becomes automatically a party to the rental contract.</p>		<p><b>Explanations and nuances:</b>            In 1993, the Supreme Civil Court (Bundesgerichtshof, BGH) decided that the surviving cohabiting partner (by definition of the opposite sex) succeeded to the lease in analogy to a family member who lived in the household of the deceased lessee. This was codified in 2001.</p> <p>The 2001 reform is not limited to cohabiting partners but refers to "persons who maintain a joint household of a permanent nature with the lessee." This can also be a cohabiting same-sex partner. That person succeeds to the lease upon death, if the spouse or civil partner does not succeed.</p>	

Jurisdiction: **Germany**

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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 No 0000	2015 N/A 0000	2015 N/A 0000	2015 No 2001	2015 No 0000	2015 No 0000
			N/A 0000		
<b>References to legal sources:</b> Art. 1931 Bürgerliches Gesetzbuch - Civil Code.		<b>References to legal sources:</b> Art. 10 Lebenspartnerschaftsgesetz - Act on Life Partnership.		<b>References to legal sources:</b>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      100% of the possessions of the deceased are subject to inheritance law. The surviving spouse has a statutory right of inheritance regarding all possessions, i.e. irrespectively if these had been acquired during the relationship or not. In the absence of a stipulated last will or a marital contract the surviving spouse will inherit:                      - everything, if there are neither children nor parents or grandparents or their respective descendants;                      - 50% if there are children, or descendants of children;                      - 75 % if there are no children, but parents or grandparents, or descendants of these.</p>		<p><b>Explanations and nuances:</b>                      100% of the possessions of the deceased are subject to inheritance law. The surviving partner has a statutory right of inheritance regarding all possessions, i.e. irrespectively if these had been acquired during the relationship or not. In the absence of a stipulated last will or a marital contract the surviving partner will inherit:                      - everything, if there are neither children nor parents or grandparents or their respective descendants;                      - 50% if there are children, or descendants of children;                      - 75 % if there are no children, but parents or grandparents, or descendants of these.</p>		<p><b>Explanations and nuances:</b></p>	



Jurisdiction: **Germany**

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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 N/A 0000	2015 Yes 2001	2015 No 0000	2015 No 0000
			N/A 0000		
<b>References to legal sources:</b> Art. 1931 and 1371 Bürgerliches Gesetzbuch - Civil Code.		<b>References to legal sources:</b> Art. 10 and art. 6(2) Lebenspartnerschaftsgesetz - Life Partnership Act, Art. 1371 Bürgerliches Gesetzbuch - Civil Code.		<b>References to legal sources:</b>	
<b>Explanations and nuances:</b> See question 6.2.		<b>Explanations and nuances:</b> See question 6.2.		<b>Explanations and nuances:</b>	

Jurisdiction: **Germany**

Source: L. Adamietz, "Death and legal family formats in Germany". 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-DE-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 0000	2015 N/A 0000	2015 N/A 0000	2015 Yes 2010	2015 No 0000	2015 No 0000
			No 2001		
			N/A 0000		
<b>References to legal sources:</b> Art. 16 Erbschaftssteuergesetz - Inheritance Tax Act.		<b>References to legal sources:</b> Art. 16 Erbschaftssteuergesetz - Inheritance Tax Act.		<b>References to legal sources:</b>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b> The statutory alignment of marriage and life partnership took place only in 2013. In 2010 the Federal Constitutional Court had declared the discrimination to be unconstitutional (21 July 2010 - 1 BvR 611/07).		<b>Explanations and nuances:</b>	

Jurisdiction: **Germany**

Source: **L. Adamietz, "Death and legal family formats in Germany". 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-DE-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 0000	2015 N/A 0000	2015 N/A 0000	2015 Yes 2005	2015 No 0000	2015 No 0000
			No 2001		
			N/A 0000		
<b>References to legal sources:</b> Art. 46 Sozialgesetzbuch VI - Social Security Code VI.		<b>References to legal sources:</b> Art. 46 Sozialgesetzbuch VI - Social Security Code VI.  Bundesverfassungsgericht - Federal Constitutional Court, Decision of 7 July 2009 - 1 BvR 1164/07 English Version available: <a href="http://www.bundesverfassungsgericht.de/EN">www.bundesverfassungsgericht.de/EN</a>		<b>References to legal sources:</b>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b>            The Federal Constitutional Court in 2009 declared exclusion of life partners from survivor's pension to be unconstitutional. It back-dated the effect of its decision to 2005 (when the regulations regarding life partnership had been aligned even more to those of marriage).</p>		<p><b>Explanations and nuances:</b></p>	

Jurisdiction: **Germany**

Source: L. Adamietz, "Death and legal family formats in Germany". 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-DE-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 N/A 0000	2015 Yes 2001	2015 No, but 1994	2015 No, but 2001
			N/A 0000	No 0000	No 0000
<b>References to legal sources:</b> Art. 823 and 844 Bürgerliches Gesetzbuch - Civil Code.		<b>References to legal sources:</b> Art. 823 and 844 Bürgerliches Gesetzbuch - Civil Code.		<b>References to legal sources:</b>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>            Survivor is entitled to compensation of the alimony (i.e. marital maintenance payments) owed to them by the deceased spouse. Compensation under art. 823(1) Civil Code can also be claimed for psychological harm because of shock over the loss of a close person; this must be medically relevant and thus go far beyond "normal" grief.</p>		<p><b>Explanations and nuances:</b>            Same entitlements as with marriage.</p>		<p><b>Explanations and nuances:</b>            See marriage for psychological harm, but subject to debate whether unmarried or unpartnered life partners are covered, too.</p> <p>In a case of art. 1615I Civil Code (i.e. care-giver maintenance for a child under the age of 3), the parent of a child of the deceased can claim the alimony owed to her/him by the deceased.</p>	