

Death and legal family formats in France

by Elisabeth Ronzier ¹

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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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. 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.

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 France

The answers concerning France 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):

Formalisation of legal family formats in France by Jérémie Kouzmine (Section 1)

Income, troubles and legal family formats in France by Jérémie Kouzmine (Section 2)

Parenting and legal family formats in France by Elisabeth Ronzier (Section 3)

Migration and legal family formats in France by Jérémie Kouzmine (Section 4)

Splitting up and legal family formats in France by Elisabeth Ronzier (Section 5)

Death and legal family formats in France by Elisabeth Ronzier (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: **France**

Source: **E. Ronzier**, "Death and legal family formats in France". 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, [LawsAndFamilies-FR-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 2002 | 2015 Yes 2013 | 2015 Yes, but 2014 | 2015 Yes, but 2014 | 2015 Yes, but 1989 | 2015 Yes, but 1999 |
| No 0000 | N/A 0000 | No 1999 | No 1999 | No 0000 | No 0000 |
| | | N/A 0000 | N/A 0000 | | |
| References to legal sources: Civil Code, art. 1751. Civil Code, art. 763. Civil Code, art. 831-2. | | References to legal sources: Civil Code, art. 1751. Law 89-462 of 6 July 1989, art. 14. | | References to legal sources: Civil Code, art. 1751. Law 89-462 of 6 July 1989, art. 14. | |

| Marriage | | Registered partnership | | Cohabitation | |
|--|----------|---|----------|---|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>Explanations and nuances: Married couples are automatically co-holders of the lease of the premises where they lived together. Co-holding of the lease is only open for full housing tenancy (not possible if it is full or part commercial tenancy).</p> <p>Whether they are co-holders of the lease or not (i.e. if the surviving spouse was living in a different place rented by the deceased spouse), when the holder of the lease dies, the surviving spouse can still live in the premises for a year for free (costs being charged on the succession). After a year, if spouses were not co-holders of the lease, the surviving spouse can ask for the lease to be transferred to him/her. If asked, the transfer of the lease can not be denied.</p> | | <p>Explanations and nuances: Partners have to ask the landlord to be co-holders of the rental contract by registered letter with an acknowledgement of receipt. Co-holding of the lease is only open for full housing tenancy (not possible if it is full or part commercial tenancy).</p> <p>If they are not co-holders of the lease, the law of 6 July 1989 gives a right to the registered partner to continue to rent the home when the holder of the lease dies.</p> | | <p>Explanations and nuances: The main possibility for informal couples to hold the contract when the official holder dies is to be both on the lease. However, since 1989 the law gives a right to the informal partner to continue to rent the home. Until 1999, according to courts informal couple was only meant to be between a man and a woman. In 1999, informal couples are legally of different or same sex, therefore they all benefit the right to continue to rent the home when one partner dies on two conditions: living with the deceased partner publicly and for at least a year before the partner died.</p> | |

Jurisdiction: **France**

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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 0000 | 2015 Yes 2013 | 2015 Yes 1999 | 2015 Yes 1999 | 2015 No, but 0000 | 2015 No, but 0000 |
| | N/A 0000 | N/A 0000 | N/A 0000 | | |
| References to legal sources: Civil Code, art. 1441. Civil Code, art. 1467. | | References to legal sources: Civil Code, art. 515-5 and following. | | References to legal sources: Civil Code, art. 815 and following. | |

| Marriage | | Registered partnership | | Cohabitation | |
|---|----------|---|----------|--|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>Explanations and nuances: The matrimonial regime being liquidated before the opening of the succession, surviving spouse will receive his/her part of the matrimonial regime.</p> <p>The matrimonial regime of community of property - which is the legal regime when no marriage contract is made by spouses - means that possessions acquired by either of them after they married are considered joint property. Therefore, if one dies, the other receives first his/her 50% part of the possessions acquired during the time of marriage.</p> | | <p>Explanations and nuances: During the time of the registered partnership, and unless otherwise stated in the partnership agreement, partners are co-owner for 50% of possessions acquired by either of them after they started this type of relationship. Therefore, when one dies, the other remains the holder of his/her 50% share of these possessions.</p> | | <p>Explanations and nuances: If during the relationship, partners have made an indivision agreement stating joint property (in this case joint property is set to 50% each unless otherwise stated), then when one dies the other one remains the holder of his/her 50% (or other) share of these possessions.</p> | |

Jurisdiction: **France**

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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 2002 | 2015 Yes 2013 | 2015 No 1999 | 2015 No 1999 | 2015 No 0000 | 2015 No 0000 |
| Yes, but 1957 | N/A 0000 | N/A 0000 | N/A 0000 | | |
| No, but 0000 | | | | | |
| References to legal sources: Civil Code, old art. 765, 766, 767 and 769. Civil Code, new art. 732, 763 and following. | | References to legal sources: Civil Code, art. 734 and following. | | References to legal sources: Civil Code, art. 734 and following. | |

| Marriage | | Registered partnership | | Cohabitation | |
|---|----------|---|----------|---|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>Explanations and nuances: Law of March 26th 1957, improved the position of the husband/wife of the deceased. He/she was given 1/4 usufruct when there was one or more children left; he/she was given 1/2 usufruct when there was one or more brothers or sisters or their descendants, or ascendants left. The right in usufruct was of the available share of the property (= share not included in the reserved portion of the succession) that the deceased had not donated (when alive or by testament).</p> <p>In 3 hypotheses, surviving husband/wife could receive part of the succession as full property: when there were only collateral relatives (further than brothers and sisters), or descendants of these relatives; when there were only ascendants from one family line; when there was for sole descendants adulterine children.</p> <p>Law n°2001-1135, December 3rd 2001 applies to the successions of persons deceased after July 1st 2002. As long as a court decision of divorce or legal separation (for fault of the surviving partner) has not been taken, a surviving husband/wife is an inheritor.</p> <ol style="list-style-type: none"> 1. If there are children left, whom are all of the deceased and the husband/wife: the husband/wife can choose between usufruct on all the property or 1/4 as full property. 2. If there are children left, whom are not all of the deceased and the husband/wife: the husband/wife can only receive 1/4 of the succession as full property. 3. If there are no children left, but the deceased's parents are both alive, the husband / wife receives half of the succession. If one the deceased's parent is already deceased, the husband/wife receives 3/4 of the succession. 4. If there are no children, and none of the deceased's parents, the husband/wife receives all of the succession as full property. <p>In any case, the husband/wife:</p> <ol style="list-style-type: none"> 1. has a right on the couple's housing. Firstly, the husband/wife can remain in the housing for a year for free (costs being charged on the succession). Secondly, he/she has a right of occupation, considered an interest for life (but his/her spouse was allowed to deny him/her this right by testament). This right of occupation must be asked for by the husband/wife within a year after his/her spouse deceased. This right of occupation is charged on the husband/wife inheritance rights (described above). 2.the husband/wife in need can receive alimony charged on the succession. It must be asked within a year after his/her spouse deceased. | | <p>Explanations and nuances: In case of the absence of a husband/wife, the succession is opened to the relatives (children, parents, siblings) of the deceased.</p> | | <p>Explanations and nuances: In case of the absence of a husband/wife, the succession is opened to the relatives (children, parents, siblings) of the deceased.</p> | |

Jurisdiction: **France**

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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 2007 | 2015 Yes 2013 | 2015 Yes 2007 | 2015 Yes 2007 | 2015 No 0000 | 2015 No 0000 |
| Yes 2000 | N/A 0000 | Yes, but 1999 | Yes, but 1999 | | |
| No 0000 | | N/A 0000 | N/A 0000 | | |
| References to legal sources: General Tax Code, art. 796-0 bis. | | References to legal sources: General Tax Code, art. 796-0 bis. | | References to legal sources: | |

| Marriage | | Registered partnership | | Cohabitation | |
|---|----------|--|----------|---|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>Explanations and nuances: The exemption applies to the successions of persons deceased after August 22nd 2007.</p> <p>Between 2000 and 2007, there was no exemption but inheritance tax was reduced to a lower amount than for any other kind of relationship.</p> | | <p>Explanations and nuances: The exemption applies to the successions of persons deceased after August 22nd 2007.</p> <p>Between 1999 and 2007, there was no exemption and inheritance tax was higher than for a married couple (but lower than for a cohabitation relationship). Also, the partnership had to be registered for two years in order to benefit reduced inheritance taxation.</p> | | <p>Explanations and nuances: There is no exemption and no lowered inheritance taxation.</p> | |

Jurisdiction: **France**

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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 1945 | 2015 Yes, but 2013 | 2015 No 1999 | 2015 No 1999 | 2015 No 0000 | 2015 No 0000 |
| No 0000 | N/A 0000 | N/A 0000 | N/A 0000 | | |
| <p>References to legal sources: Social security Code, art. L-351-3 and following. Social security Code, art. R-353-1 and following. Social security Code, art. D-353-1 and following. Civil and military pension Code, art. L38 and s. Civil and military pension Code, art. R53 and s. Civil and military pension Code, art. D19-1 and s.</p> | | <p>References to legal sources: Social security Code, art. L-351-3.</p> | | <p>References to legal sources: Social security Code, art. L-351-3.</p> | |

| Marriage | | Registered partnership | | Cohabitation | |
|--|----------|---|----------|---|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>Explanations and nuances: The first survivor's pension was created in 1853 but it's only in 1945 that it has been largely enforced. Until 1971, a survivor's pension could only be received if the surviving spouse had no income at all (from work or from any other kind of pension). Since 1971, a surviving's spouse can receive a pension depending on his/her income and depending on the deceased partner's employment status.</p> <p>- If the deceased spouse was working in the private sector: surviving spouse is entitled to a survivor's pension if global resources are under a certain amount (€ 19 988 if living alone, € 31 982 if living in another relationship).</p> <p>- If the deceased spouse was working in the public sector: surviving spouse or ex-spouse is entitled to a survivor's pension as long as he/she remains single. In the public sector, conditions for the survivor's pension are either: children were born or adopted during the marriage or the marriage lasted at least 4 years or the marriage lasted at least 2 years before the deceased spouse retired or marriage was contracted before the deceased spouse retired and he/she was entitled to a disability pension.</p> <p>In both case, the survivor's pensions are roughly 50% of the retirement pension that was received by the deceased spouse.</p> | | <p>Explanations and nuances:</p> | | <p>Explanations and nuances:</p> | |

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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 Yes 2013 | 2015 Yes 1999 | 2015 Yes 1999 | 2015 Yes 1970 | 2015 Yes 1999 |
| | N/A 0000 | | | No 0000 | Doubt 0000 |
| <p>References to legal sources: Civil Code, art. 1382 and 1383.</p> <p>For example: Ph. Le Tourneau, Répertoire Dalloz, V° Responsabilité civile, n°19.</p> | | <p>References to legal sources: Civil Code, art. 1382 and 1383.</p> <p>For example : Ph. Le Tourneau, Répertoire Dalloz, V° Responsabilité civile, n°19.</p> | | <p>References to legal sources: Cour de cassation, Chambre Mixte, 27 February 1970, Dangereux.</p> <p>TGI Belfort, 25 July 1995 (JCP G, 1996 II 22724 by C. Paulin).</p> | |

| Marriage | | Registered partnership | | Cohabitation | |
|---|----------|---|----------|---|----------|
| diff.-sex | same-sex | diff.-sex | same-sex | diff.-sex | same-sex |
| <p>Explanations and nuances: General rules of torts apply: the spouse has to prove suffering prejudice (such as moral or financial damage) to receive compensation from the wrongdoer. The surviving spouse can argue suffering his/her own direct moral prejudice, his/her own direct financial prejudice but also indirect prejudice (for example when he/she was receiving a regular allowance from the deceased).</p> | | <p>Explanations and nuances: General rules of torts apply (see under Marriage).</p> | | <p>Explanations and nuances: Before 1970, Courts ruled that cohabitation was an irregular kind of relationship, therefore surviving partner would be denied compensation in case of wrongful death of the other one. Civil supreme court reversed the solution in 1970: cohabitation was not considered irregular anymore and no legal bond between deceased and living partner was needed for the latter to receive compensation.</p> <p>About same-sex cohabitation there is no major case law.</p> <p>One can consider that because of criminal provisions concerning homosexuality until 1981, no compensation would be allowed for wrongful deaths occurring before.</p> <p>Between 1991 and 1999, one can assume that the 1970 case law on different sex cohabitation would apply to same-sex cohabitation. A few lower courts admitted to apply the 1970 case law.</p> <p>After 1999, cohabitation is defined in the Civil code as a different sex or a same-sex relationship, therefore there is no doubt that wrongful death of one partner would entitle the other one to compensation in both cases.</p> <p>When compensation is allowed, general rules of torts apply (see marriage).</p> | |