

Death and legal family formats in Italy

by Marco Gattuso 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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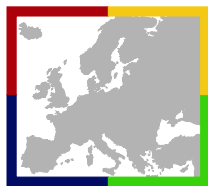
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Disclaimer

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 Italy

The answers concerning Italy 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 Italy
by Matteo Winkler (Section 1)**

**Income, troubles and legal family formats in Italy
by Marco Gattuso (Section 2)**

**Parenting and legal family formats in Italy
by Matteo Winkler (Section 3)**

**Migration and legal family formats in Italy
by Matteo Winkler (Section 4)**

**Splitting up and legal family formats in Italy
by Marco Gattuso (Section 5)**

**Death and legal family formats in Italy
by Marco Gattuso (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.

As already pointed out answering some of the former questions, Italian law has changed **deeply thanks to the new law on same-sex Civil Unions and on Cohabitation (which applies to opposite and same-sex partners)**. Before this law, in the absence of any legislation providing protection to same-sex couples, in recent years the Italian legal system had slowly developed thanks to Italian jurisprudence. The Constitutional Court (judgment n. 138 of 15 April 2010) and the Italian Superior Court [Corte di cassazione] (judgment 4184 of 2012 and 2400 of 2015) stressed the necessity to grant protection to the fundamental rights of same-sex partners, even in the absence of a law, leaving concrete solutions to ordinary judges. These indications from the highest courts eventually led to a surprising activity of Italian courts. You may read almost all known Italian case law on the topic in the database of the site Articolo29: www.articolo29.it.

Jurisdiction: **Italy**

Source: **M. Gattuso**, "Death and legal family formats in Italy". 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-IT-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 1978	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	2016 Yes 2016	2016 Yes 2016
No 0000			N/A 0000	Yes 1988	Doubt 1988
				No 0000	No 0000
References to legal sources: Art. 6 of the Law nr 39 of 27 July 1978.		References to legal sources: Art. 6 of the Law nr 39 of 27 July 1978. Art. 1, § 20, Law 20 May 2016, n. 76.		References to legal sources: Art. 1, § 44, Law 20 May 2016, n. 76. Art. 6 of the Law nr 39 of 27 July 1978.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances:</p>		<p>Explanations and nuances: This rule now applies also to same-sex Civil Unions, due to the Law 20 May 2016, n. 76, article 1, § 20.</p>		<p>Explanations and nuances: Art. 1, § 44, Law 20 May 2016, n. 76 rules that the partner has the right to continue to rent the home. Even before the new law, with sentence nr. 404 of 7 April 1988, the Italian Constitutional Court declared art. 6 of Law nr 39 of 27 July 1978 unconstitutional, in as far as it did not consider a cohabitant's right to continue to rent the home. This principle had never been applied (in any known decision) to a same-sex partner.</p>	

Jurisdiction: **Italy**

Source: **M. Gattuso**, "Death and legal family formats in Italy". 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-IT-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 Yes, but 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes, but 2016	2016 No, but 2016	2016 No, but 2016
			N/A 0000	No 0000	No 0000
<p>References to legal sources: First Book, sixth Title, sixth Chapter, of the Civil Code.</p> <p>Art. 536, 540, 565 and 581 of the Civil Code.</p>		<p>References to legal sources: First Book, sixth Title, sixth Chapter, of the Civil Code.</p> <p>Art. 536, 540, 565 and 581 of the Civil Code.</p> <p>Art. 1, § 20, Law 20 May 2016, n. 76.</p>		<p>References to legal sources: Art. 1, § 50, Law 20 May 2016, n. 76.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: By choosing a special regime [Regime della separazione dei beni], married couples may decide that possessions acquired during marriage will not be considered as joint possession. Nevertheless, succession rules in case of death provide binding special property portions reserved to the surviving spouse.</p>		<p>Explanations and nuances: Marriage rules now apply also to same-sex Civil Unions, due to the Law 20 May 2016, n. 76, article 1, § 20.</p>		<p>Explanations and nuances: By choosing a special regime [Regime della comunione dei beni], cohabitants may decide that possessions acquired during cohabitation will be considered as joint possession.</p>	

Jurisdiction: **Italy**

Source: **M. Gattuso**, "Death and legal family formats in Italy". 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-IT-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 2016	2016 No 0000	2016 No 0000
			N/A 0000		
References to legal sources: Art. 536, 540, 565 and 581 of the Civil code.		References to legal sources: Art. 536, 540, 565 and 581 of the Civil code. Art. 1, § 20, Law 20 May 2016, n. 76.		References to legal sources:	
Explanations and nuances:		Explanations and nuances: These rules now apply also to same-sex Civil Unions, due to the Law 20 May 2016, n. 76, article 1, § 20.		Explanations and nuances: Without testament, there is no cohabitant's right to inherit.	

Jurisdiction: **Italy**

Source: **M. Gattuso**, "Death and legal family formats in Italy". 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-IT-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 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	2016 No 0000	2016 No 0000
			N/A 0000		
<p>References to legal sources: Law Decree of 31 October 1990, n. 346 (which has been modified several times).</p>		<p>References to legal sources: Law Decree of 31 October 1990, n. 346 (which has been modified several times). Art. 1, § 20, Law 20 May 2016, n. 76.</p>		<p>References to legal sources:</p>	
<p>Explanations and nuances: The spouse does not pay any inheritance taxes over an inheritance up to one million Euro, and pays only 4% above one million Euro.</p>		<p>Explanations and nuances: These rules now apply also to same-sex Civil Unions, due to the Law 20 May 2016, n. 76, article 1, § 20.</p>		<p>Explanations and nuances:</p>	

Jurisdiction: **Italy**

Source: **M. Gattuso, "Death and legal family formats in Italy". 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-IT-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 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	2016 No 0000	2016 No 0000
			N/A 0000		
References to legal sources: Royal Decree-Law 14 April 1939, n. 636.		References to legal sources: Royal Decree-Law 14 April 1939, n. 636. Art. 1, § 20, Law 20 May 2016, n. 76.		References to legal sources:	
Explanations and nuances:		Explanations and nuances:		Explanations and nuances:	

Jurisdiction: **Italy**

Source: **M. Gattuso**, "Death and legal family formats in Italy". 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-IT-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 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2016	2016 Yes 1994	2016 Yes 2016
			N/A 0000	No 0000	Yes, but 2011
					Doubt 1994
					No 0000
References to legal sources: Art. 2043 of the Civil Code.		References to legal sources: Art. 2043 of the Civil Code.		References to legal sources: Art. 1, § 49, Law 20 May 2016, n. 76.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances:</p>		<p>Explanations and nuances:</p>		<p>Explanations and nuances: Art. 1, § 20, Law 20 May 2016, n. 76 rules that in case of wrongful death, cohabitants must be treated equally to spouses.</p> <p>Even before the new law, the Italian Superior Court [Corte di cassazione] has long recognised that the surviving cohabitant is entitled to compensation (see Sentence n. 2988 of 28 March 1994 and, recently, Sentence n. 7128 of 21 March 2013). We have had only one published decision of a local court (Tribunale Milano, 13 June 2011, published in www.articolo29.it/coppia-2/risarcimento-dei-danni-da-mortemorte/) related to same-sex cohabitants (recent Italian jurisprudence does not admit relevant differences in treatment between different-sex and same-sex cohabitation; see question 6.7, General background).</p>	