

Death and legal family formats in Portugal

by Carlos Pamplona Côte-Real 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

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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. 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 Portugal

The answers concerning Portugal 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 Portugal
by Carlos Pamplona Côrte-Real (Section 1)**

**Income, troubles and legal family formats in Portugal
by Miguel Freitas (Section 2)**

**Parenting and legal family formats in Portugal
by Miguel Freitas (Section 3)**

**Migration and legal family formats in Portugal
by Miguel Freitas (Section 4)**

**Splitting up and legal family formats in Portugal
by Carlos Pamplona Côrte-Real (Section 5)**

**Death and legal family formats in Portugal
by Carlos Pamplona Côrte-Real (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: **Portugal**

Source: C. Pamplona Côrte-Real, "Death and legal family formats in Portugal". 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-PT-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 0000	2016 Yes 2010	2016 N/A 0000	2016 N/A 0000	2016 Yes 2010	2016 Yes 2010
	N/A 0000			Yes, but 1999	Yes, but 2001
				Yes, but 1985	No 0000
				No 0000	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Civil Code, Article 1106, Number 1(a).</p>		<p>References to legal sources:</p>		<p>References to legal sources: Civil Code, Article 1106, Number 1(b). Law 135/1999, 28 August. Law 7/2001, 11 May, Article 4. Law 23/2010, 30 August. Law 2/2016, 29 February.</p>	
<p>Explanations and nuances:</p>		<p>Explanations and nuances: There is no Registered Partnership in Portugal.</p>		<p>Explanations and nuances: Allows the surviving partner to maintain the rental contract as long as they have been living together in cohabitation in those premises for more than 1 year. According to Law 135/1999 (different-sex cohabitants) and Law 7/2001 (same-sex and different-sex cohabitants), the survivor might lose the right to continue to rent the home if there is a spouse of the deceased, or children that lived with the deceased for more than a year. This was revoked by Law 23/2010. Art. 5 of Law 23/2010 gives the surviving partner the right to continue to rent the home.</p>	

Jurisdiction: **Portugal**

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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 Yes, but 2010	2015 N/A 0000	2015 N/A 0000	2015 No 0000	2015 No 0000
	N/A 0000				
References to legal sources: Civil Code, Article 1732 and 1733. Civil Code, Article 1724.		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>Explanations and nuances: Only in community property, in which all assets are considered common to both, according to articles 1732 and 1733; in the same way, in the scheme of partial community property, relative to the assets acquired against payment, according to Article 1724 of the Civil Code.</p> <p>If there is no prenuptial convention, the scheme applied is partial community property.</p>		<p>Explanations and nuances:</p>		<p>Explanations and nuances: No, because there is separation of property.</p>	

Jurisdiction: **Portugal**

Source: C. Pamplona Côrte-Real, "Death and legal family formats in Portugal". 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-PT-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
2015 Yes 0000	2015 Yes 2010	2015 N/A 0000	2015 N/A 0000	2015 No, but 1977	2015 No, but 2001
	N/A 0000			No 0000	No 0000
References to legal sources: Civil Code, Articles 2156 to 2161.		References to legal sources:		References to legal sources: Civil Code, Article 2020. Law 7/2001, 11 May, Article 3(e,f,g), Article 5, Numbers 1 to 7, and Article 6, as amended by Law 23/2010, 30 August.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: The spouse is imperatively an inheritor of the part of the inheritance that is mandatorily reserved for them, which they receive either alone, along with children (if they exist) or with ascending relatives (only if there are no children), according to Articles 2156 to 2161 of the Civil Code.</p>		<p>Explanations and nuances:</p>		<p>Explanations and nuances: In cohabitation, in absence of a testament, the partner is never an inheritor, but is protected regarding the residency, by the right of housing and use of its contents, for a period equal to the length of the cohabitation.</p> <p>Since 1977, the Civil Code has included a provision on alimony for the surviving different-sex de facto partner (Article 2020).</p> <p>The partner is also protected by a social protection regarding the general social security scheme and special social security schemes, namely regarding survivor's pension, according to Article 3(e, f, g).</p>	

Jurisdiction: **Portugal**

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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 0000	2015 Yes 2010	2015 N/A 0000	2015 N/A 0000	2015 Yes 0000	2015 Yes 0000
	N/A 0000				
References to legal sources: Article 6(e) of the Stamp Duty Code, approved by Decree 287/2003, Article 31.		References to legal sources:		References to legal sources: Article 6(e) of the Stamp Duty Code, approved by Decree 287/2003, Article 31.	
Explanations and nuances:		Explanations and nuances:		Explanations and nuances: Before 2003, the surviving partner was taxed like a third party.	

Jurisdiction: **Portugal**

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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 0000	2015 Yes 2010	2015 N/A 0000	2015 N/A 0000	2015 Yes 2010	2015 Yes 2010
	N/A 0000			Yes 1999	Doubt 2001
				No 0000	No 0000
References to legal sources: Article 40, Number 1 of Decree 142/73, 31 March. Article 3, Number 1(a) of Decree 223/95, 8 September. Article 7, Number 1(a) of Decree 322/90, 18 October.		References to legal sources:		References to legal sources: Law 23/2010, 30 August.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
Explanations and nuances:		Explanations and nuances:		Explanations and nuances: Cohabitation legislation only exists since 1999 for different-sex couples, and since 2001 for any kind of cohabitation. For different-sex couples, access to survivor's pension exists since 1999. For same sex couples this access only exists since 2010.	

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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 2010	2015 N/A 0000	2015 N/A 0000	2015 Yes 2008	2015 Yes 2008
	N/A 0000			No 0000	No 0000
References to legal sources: Civil Code, Article 496, Number 2.		References to legal sources:		References to legal sources: Civil Code, Article 496, Number 3, as amended by Law 61/2008, 31 October.	
Explanations and nuances:		Explanations and nuances:		Explanations and nuances: Law 61/2008, 31 October added Article 496, Number 3, to include cohabitation.	