

Death and legal family formats in Sweden

by Kajsa Walleng¹

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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answers in this section of the database.

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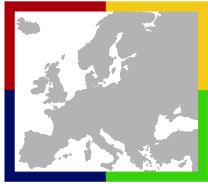


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FamiliesAndSocieties

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. 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 Sweden

The answers concerning Sweden 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 Sweden

by Hans Ytterberg (Section 1)

Income, troubles and legal family formats in Sweden

by Kajsa Walleng (Section 2)

Parenting and legal family formats in Sweden

by Hans Ytterberg (Section 3)

Migration and legal family formats in Sweden

by Hans Ytterberg (Section 4)

Splitting up and legal family formats in Sweden

by Hans Ytterberg (Section 5)

Death and legal family formats in Sweden

by Kajsa Walleng (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: **Sweden**

Source: K. Walleng, "Death and legal family formats in Sweden". 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-SE-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 1972	2015 Yes 2009	2015 N/A 0000	2015 Yes 1995	2015 Yes 1988	2015 Yes 1988
Yes 1959	N/A 0000		N/A 0000	Yes, but 1974	No 0000
Yes, but 0000				No 0000	
<p>References to legal sources: Art. 33 of chapter 12 of The Swedish Land Law (1970:994)(Jordabalken).</p> <p>Until 1972: Art. 3 of the "Particular Provisions regarding the Joint Home of spouses Act" (Lag den 15 maj 1959 (nr 157) med särskilda bestämmelser om makars gemensamma bostad).</p>		<p>References to legal sources: Art. 33 of chapter 12 of The Swedish Land Law (1970:994)(Jordabalken).</p>		<p>References to legal sources: Art. 33 of chapter 12 of The Swedish Land Law (1970:994)(Jordabalken 1970:994).</p> <p>Until 1974: Art. 1 of the Law on unmarried cohabitants joint home, section 1 (Lag 5 juni 1973 om ogifta samboendes gemensamma bostad (nr 651)).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Until 1959: Yes, but it had to be considered reasonable.</p>		<p>Explanations and nuances: Registered partnership was introduced in 1995. The rules were the same as for spouses.</p>		<p>Explanations and nuances: Until 1988: Yes, but it had to be considered reasonable.</p>	

Jurisdiction: **Sweden**

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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, but 0000	2015 No, but 0000	2015 N/A 0000	2015 No, but 1995	2015 No, but 1974	2015 No, but 1988
			N/A 0000	No 0000	No 0000
References to legal sources: Art. 3 of chapter 1, art. 1 of chapter 7 and chapters 9-11 of the Marital Code (1987:230) (Äktenskapsbalken).		References to legal sources: Art. 1 of chapter 3 of the Act (1994: 1117) on registered partnership (Lag om registrerat partnerskap. The article refers to the legal consequences laid down in the Marital Code.		References to legal sources: Art. 3, 8-21 of The Cohabitees Act (2003:376) (Sambolagen).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Each spouse owns the property that he/she acquires during the marriage, if the circumstances do not entail that the spouses are to be seen as joint owners (for example if the other spouse has contributed to the acquisition). However, there are distribution of property rules that apply when the relationship is dissolved either by death or divorce, and which may have the practical effects hinted at in this question. According to the main rule in the Marriage Code, all assets that the spouses own are considered as marital property. It doesn't matter if the spouse acquired the assets before or during the marriage. Also gifts and heritage are considered as marital property according to the main rule. The net value of all property that is marital property is to be shared equally between the spouses upon a dissolution of the marriage. This means that a spouse in principle has a right to half of the value of the other spouse's property after deduction of the other spouse's debts.</p>		<p>Explanations and nuances: Each partner owns the property that he/she acquires during the marriage, if the circumstances do not entail that the partners are to be seen as joint owners (for example if the other partner has contributed to the acquisition). However, there are distribution of property rules that apply when the relationship is dissolved either by death or divorce, and which may have the practical effects hinted at in this question. See also the explanation for married couples, and the main rule for division of property upon a dissolution of a registered partnership.</p>		<p>Explanations and nuances: Each cohabitee owns the property that he/she acquires during the cohabitation, if the circumstances do not entail that the cohabitees are to be seen as joint owners (for example if the other cohabitee has contributed to the acquisition). However, there are distribution of property rules that apply when the relationship is dissolved either by death or dissolution of the cohabitation, and which may have the practical effects hinted at in this question. Compared to the legal consequences of a marriage, the legal consequences of cohabitation is limited. The law only covers the joint dwelling and household goods that has been acquired during (or just before) the cohabitation. This property is called "cohabitee property". The Cohabitees Act gives the cohabitees a legal right to an equal share of the value of the joint dwelling and household goods upon a termination of the cohabitation. The value is calculated after that the spouses debts have been deducted. Spouses are required to make a division of property, but cohabitees need to demand that a division of property shall be done. When the cohabitation ends by death this right only belongs to the surviving cohabitee, and not the heirs of the deceased cohabitee. This requirement needs to be proposed within a year from the dissolution of the cohabitation.</p>	

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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, but 1988	2015 Yes, but 2009	2015 N/A 0000	2015 Yes, but 1995	2015 No, but 0000	2015 No, but 0000
Yes, but 1928	N/A 0000		N/A 0000		
<p>References to legal sources: Art. 1 of chapter 3 of the Inheritance Code (1958:637) (Ärvdabalken).</p> <p>Until 1988: the Inheritance Code of 1928 (1928 års arvslag).</p> <p>Until 1928: The Marriage Code of 1921 (1921 års giftermålsbalk).</p>		<p>References to legal sources: Art. 1 of chapter 3 of the Inheritance Code (1958:637) (Ärvdabalken).</p>		<p>References to legal sources: Art. 18 of the Cohabitees Act (Sambolagen).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Today: Yes, but heirs to the deceased spouse from a previous relationship (children who are not children also of the surviving spouse) have a right to their inheritance first. However, the surviving spouse inherits before common children.</p> <p>Until 1988: Yes, but only if the deceased spouse had no other heirs at all. Also common children had right to inherit their parent directly at his or her death.</p>		<p>Explanations and nuances: Registered partnership was introduced in 1995. The rules were the same as for spouses.</p>		<p>Explanations and nuances: Unmarried cohabittees have no legal inheritance after each other. However a surviving cohabitee has a right, in the division of property, to keep a sum of two base amounts (approximately 9000 euro in 2016). However, if the property in the division has a lower value, the surviving cohabitee has no right to get property from the deceased cohabitee's estate.</p>	

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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, but 2005	2015 Yes, but 2009	2015 N/A 0000	2015 Yes, but 2005	2015 Yes, but 2005	2015 Yes, but 2005
Yes 0000	N/A 0000		Yes 1995	Yes 1988	Yes 1988
			N/A 0000	Yes, but 0000	No 0000
References to legal sources: Until 2005: Art. 28 of the Law on Inheritance and gift tax (1941:416) (Lag om arvsskatt och gåvoskatt).		References to legal sources: Until 2005: Art. 28 of the Law on Inheritance and gift tax (1941:416) (Lag om arvsskatt och gåvoskatt).		References to legal sources: Until 2005: Art. 28 of the Law on Inheritance and gift tax (1941:416) (Lag om arvsskatt och gåvoskatt).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: The Inheritance Tax was abolished as of 1 January 2005.</p>		<p>Explanations and nuances: Registered partnership was introduced in 1995. The rules were the same as for married couples. The Inheritance Tax was abolished as of 1 January 2005.</p>		<p>Explanations and nuances: Before 1988 cohabitants were treated equally to married couples in terms of more favorable inheritance tax, but only if the cohabitees had previously been married to each other or if they had or had had children together. (Art. 28 prior to the 1988 amendment which made the tax exemption available for all cohabitants).</p>	

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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 1990	2015 Yes, but 2009	2015 N/A 0000	2015 Yes, but 1995	2015 Yes, but 1990	2015 Yes, but 1990
Yes, but 0000	N/A 0000		N/A 0000	No, but 0000	No 0000
References to legal sources: Chapters 75-85 of The Social Security Code (2010:110) (Socialförsäkringsbalken).		References to legal sources: Chapters 75-85 of The Social Security Code (2010:110) (Socialförsäkringsbalken).		References to legal sources: Chapters 75-85 of The Social Security Code (2010:110) (Socialförsäkringsbalken).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: All surviving spouses can receive something called an adjustment- or guarantee-pension if some requirements are fulfilled. Most collective bargaining agreements also contain some form of survivor's pension for both married couples, registered partners and cohabitants, regardless of sex.</p> <p>Before 1990 a surviving woman could receive a survivor's pension if she had the responsibility for children under 16 years old, or if she was older than 36 years and married with the deceased spouse for at least five years. A woman who married before 1990 can in some cases still receive such a pension according to transitional rules.</p>		<p>Explanations and nuances: All surviving partners can receive something called an adjustment- or guarantee-pension if some requirements are fulfilled. Most collective bargaining agreements also contain some form of survivor's pension for both married couples, registered partners and cohabitants, regardless of sex.</p> <p>Registered partnership was accepted first in 1995. The rules are the same as for spouses.</p>		<p>Explanations and nuances: Most collective bargaining agreements also contain some form of survivor's pension for both married couples, registered partners and cohabitants, regardless of sex.</p> <p>A surviving cohabitee can also, as a surviving spouse, receive an adjustment- or guarantee-pension, if the cohabitees have/have had common children or if they have previously been married or in a registered partnership.</p> <p>Before 1990 an unmarried or divorced woman would be treated the same as a widow if she had previously been married to the deceased man or if they had had children in common.</p>	

Jurisdiction: **Sweden**

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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, but 2002	2015 Yes, but 2009	2015 N/A 0000	2015 Yes, but 1995	2015 Yes, but 2002	2015 Yes, but 2002
Yes, but 1993	N/A 0000		N/A 0000	Yes, but 1993	Yes, but 1993
No 0000				No 0000	No 0000
<p>References to legal sources: Art.2 (3) of chapter 5 of the Tort Act (1972:207) (Skadeståndslagen) as amended by the Act (2001:732) amending the Tort Act.</p> <p>Before 2002, Case Law, see NJA 1993 page 41 I & II (Supreme Court 1993-02-24).</p>		<p>References to legal sources: Art.2 (3) of chapter 5 of the Tort Act (1972:207) (Skadeståndslagen) as amended by the Act (2001:732) amending the Tort Act.</p> <p>Before 2002, Case Law, see NJA 1993 page 41 I & II (Supreme Court 1993-02-24).</p>		<p>References to legal sources: Art.2 (3) of chapter 5 of the Tort Act (1972:207) (Skadeståndslagen) as amended by the Act (2001:732) amending the Tort Act.</p> <p>Before 2002, Case Law, see NJA 1993 page 41 I & II (Supreme Court 1993-02-24).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Compensation is only granted if the surviving spouse can demonstrate that he/she has suffered personal injury as a consequence of a wrongful death.</p>		<p>Explanations and nuances: Compensation is only granted if the surviving spouse can demonstrate that he/she has suffered personal injury as a consequence of a wrongful death.</p>		<p>Explanations and nuances: Compensation is only granted if the surviving spouse can demonstrate that he/she has suffered personal injury as a consequence of a wrongful death.</p>	