

Death and legal family formats in Slovenia

by Neza Kogovsek Salamon¹

The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples

Edited by Kees Waaldijk,² Marie Digoix,³ Natalie Nikolina,² Giuseppe Zago,² Daniel Damonzé,² Arianna Caporali,³ Kamel Nait Abdellah³

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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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¹ Neza Kogovsek Salamon (PhD in Law, Senior researcher, Peace Institute) is grateful for the research assistance provided by Katja Mihelčič (MA, Junior researcher, Peace Institute), and also for the useful comments that Dr. Barbara Rajgelj (assistant professor of civil and corporate law, Faculty of Social Sciences, University of Ljubljana; and Institute for culture of diversity Open) made on an

earlier version of the answers in this section of the database.

² [Grotius Centre for International Legal Studies](#), Leiden University, Netherlands, www.leiden.edu.



**Universiteit
Leiden**
The Netherlands

³ Institut national d'études démographiques, Paris, France, www.ined.fr.

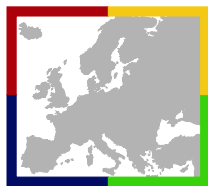


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Disclaimer

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 Slovenia

The answers concerning Slovenia 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 Slovenia

by Neza Kogovsek Salamon (Section 1)

Income, troubles and legal family formats in Slovenia

by Barbara Rajgelj (Section 2)

Parenting and legal family formats in Slovenia

by Barbara Rajgelj (Section 3)

Migration and legal family formats in Slovenia

by Neza Kogovsek Salamon (Section 4)

Splitting up and legal family formats in Slovenia

by Barbara Rajgelj (Section 5)

Death and legal family formats in Slovenia

by Neza Kogovsek Salamon (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: **Slovenia**

Source: **N. Kogovsek Salamon**, "Death and legal family formats in Slovenia". 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-SI-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, but 2003	2015 N/A 0000	2015 N/A 0000	2015 No, but 2005	2015 Yes, but 2003	2015 No 0000
Yes, but 1991			N/A 0000	Yes, but 1991	
? 0000				? 0000	
References to legal sources: Art. 109(1) of the Housing Act (SZ-1, Official gazette RS, No. 69/03 of 16.7.2003). Before 2003: Art. 56(1) of the Housing Act (SZ, Official gazette RS, No. 18/1991 of 11.10.1991).		References to legal sources: Art. 37 of Registration of Same-Sex Partnership Act (ZRIPS, Official gazette RS, No. 65/2005 of 8.7.2005).		References to legal sources: Art. 109(1) of the Housing Act (SZ-1, Official gazette RS, No. 69/03 of 16.7.2003). Before 2003: Art. 56(1) of the Housing Act (SZ, Official gazette RS, No. 18/1991 of 11.10.1991).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Yes, the owner of the apartment is obliged to conclude a new lease agreement with the spouse of the deceased tenant under the same conditions as the previous lease, if this individual actually lived in the deceased's apartment at the time of his or her spouse's death, officially had a permanent residence in this apartment and was listed in the tenancy contract. The demand for a contract must be given to the owner in writing within 90 days after the death of the tenant.</p> <p>Before 2003 the conditions were the same but they were defined in the earlier law.</p>		<p>Explanations and nuances: The Slovene Law on Registration of Same-Sex Partnership (ZRIPS) states that the registered partner of the deceased has the right to demand a new lease agreement from the lessor if he actually lives in the deceased's apartment at the time of his death and is listed in the tenancy contract. The Law (ZRIPS), however, does not state that the new lease must happen under the same conditions.</p> <p>Under the Housing Act which regulates renting of the social (non-profit) apartments same-sex registered partners are not listed among the family members who have the right to inherit the tenancy right in such apartment.</p>		<p>Explanations and nuances: Yes, the owner of the apartment is obliged to conclude a new lease agreement with the different-sex person with whom the deceased tenant cohabitated under the same conditions as the previous lease, if this individual actually lived in the deceased's apartment at the time of his or her partner's death, officially had a permanent residence in this apartment and was listed in the tenancy contract. The demand for a contract must be given to the owner in writing within 90 days after the death of the tenant.</p>	

Jurisdiction: **Slovenia**

Source: **N. Kogovsek Salamon**, "Death and legal family formats in Slovenia". 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-SI-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
2015 Yes 1976	2015 N/A 0000	2015 N/A 0000	2015 Yes 2005	2015 Yes 1976	2015 No 0000
? 0000			N/A 0000	? 0000	
References to legal sources: Art. 51, 58(1) and 59(1) of the Marriage and Family Relations Act (ZZZDR, Official gazette SRS, No. 15/76 of 4.6.1976).		References to legal sources: Art. 9 and 33(1) of Registration of Same-Sex Partnership At (ZRIPS, Official gazette RS, No. 65/2005 of 8.7.2005).		References to legal sources: Art. 12(1), 51, 58(1) and 59(1) of the Marriage and Family Relations Act (ZZZDR, Official gazette SRS, No. 15/76 of 4.6.1976).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: According to the Marriage and Family Relations Act (ZZZDR) the assets acquired by the spouses during their marriage are joint property, but only if the property is resulting from work (art. 51/2 of the ZZZDR). Their share of joint assets is presumed to be equal (50%/50%). However, upon termination of marriage, the spouses can prove that they contributed to their joint property in different proportions.</p>		<p>Explanations and nuances: According to the Registration of Same-Sex Partnership Act (ZRIPS) the assets acquired by the registered partners during their marriage are joint property. The Law states that assets are divided upon termination of the partnership, but it does not say how and in what proportion.</p>		<p>Explanations and nuances: Since cohabitation has identical effects as marriage (art. 12(1) of Marriage and Family Relations Act), the same rules on joint property that apply to marriage apply also to different-sex 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 1976	2015 N/A 0000	2015 N/A 0000	2015 Yes, but 2009	2015 Yes 1976	2015 Yes, but 2013
? 0000			No 2005	? 0000	No 0000
			N/A 0000		

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Art. 10(1) of Inheritance Act (ZD, Official gazette SRS, No. 15/76 of 4.6.1976).</p>		<p>References to legal sources: Art. 22 of Registration of Same-Sex Partnership Act (ZRIPS, Official gazette RS, No. 65/2005 of 8.7.2005).</p> <p>Decision of the Constitutional Court of the Republic of Slovenia No. U-I-425/06 of 2 July 2009.</p> <p>Inheritance Act (ZD, Official gazette SRS, No. 15/76 of 4.6.1976).</p>		<p>References to legal sources: Art. 10(2) of Inheritance Act (ZD, Official gazette SRS, No. 15/76 of 4.6.1976).</p> <p>Decision of the Constitutional Court of the Republic of Slovenia No. U-I-212/10 of 14 March 2013.</p> <p>Inheritance Act (ZD, Uradni list SRS, št. 15/76 z dne 4.6.1976).</p>	

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: In 2009 it was decided by the Constitutional Court that the Registration of Same-Sex Partnership Act (ZRIPS) is unconstitutional. The Court found that the inheritance regime for registered partners differed from the inheritance regime for spouses, but the law did not provide for any objective reasons for such difference in treatment. The Court found that such difference in treatment constitutes discrimination on the grounds of sexual orientation and declared art. 22 of ZRIPS unconstitutional.</p> <p>The Court mandated the National Assembly to remedy the established inconsistency within six months after the publication of this decision in the Official gazette of the Republic of Slovenia. The National Assembly has not done that yet, therefore in the meantime the same rules apply in inheritance matters between two registered partners as they do between spouses according to the Inheritance Act.</p>		<p>Explanations and nuances: In 2013 it was decided by the Constitutional Court that the Inheritance Act of 1976 is unconstitutional. The court found that the inheritance regime for cohabiting same-sex partners differed from the inheritance regime for cohabiting different-sex partners, but the law did not provide for any objective reasons for such difference in treatment. The court found that such difference in treatment constitutes discrimination on the grounds of sexual orientation and declared the Inheritance Act unconstitutional.</p> <p>The Court mandated the National Assembly to remedy the established inconsistency within six months after the publication of this decision in the Official gazette of the Republic of Slovenia. The National Assembly has not done that yet. In the meantime, the same rules apply in inheritance matters between two same-sex partners living in cohabitation, who have not registered their partnership according to the Registration of Same-Sex Partnership Act (ZRIPS), as they do for two individuals of different-sex in cohabitation according to the existing legislation on inheritance.</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 2006	2015 N/A 0000	2015 N/A 0000	2015 Yes, but 2009	2015 Yes 2006	2015 Yes, but 2013
Yes 1988			No 2005	No 0000	No 0000
? 0000			N/A 0000		

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Art. 9(1) Inheritance and Gift Taxation Act (ZDDD, Official gazette RS, No. 117/06, of 16.11.2006).</p> <p>Valid before ZDDD: Civil Tax Act (ZDO, Official gazette SRS, No. 36/88).</p>		<p>References to legal sources: Art. 9(1) Inheritance and Gift Taxation Act (ZDDD, Official gazette RS, No. 117/06, of 16.11.2006).</p> <p>Decision of the Constitutional Court of the Republic of Slovenia No. U-I-425/06 of 2 July 2009.</p>		<p>References to legal sources: Art. 12 of Marriage and Family Relations Act (ZZZDR, Official gazette SRS, No. 15/76 of 4.6.1976).</p> <p>Art. 9(1) Inheritance and Gift Taxation Act (ZDDD, Official gazette RS, No. 117/06, of 16.11.2006).</p> <p>Decision of the Constitutional Court of the Republic of Slovenia No. U-I-212/10 of 14 March 2013.</p>	
<p>Explanations and nuances: The surviving spouse is exempted from paying inheritance tax.</p>		<p>Explanations and nuances: Since the Constitutional decision of 2009, the surviving registered partner is exempted from paying inheritance tax (for more on the decision see question 6.3, "Inheritance").</p>		<p>Explanations and nuances: Different sex: According to art. 12(1) of Marriage and Family Relations Act (ZZZDR) cohabitation has identical effects to marriage. Whether cohabitation exists is decided when a decision regarding a right or an obligation depends on the existence of cohabitation. The decision has a legal effect only in the proceedings in which the issue has been resolved (Art. 12(2)). Nevertheless, the tax authority, when determining the existence of cohabitation can rely on the court's decision. From this it follows that a partner in cohabitation is exempt from paying inheritance tax.</p> <p>Same sex: Since the Constitutional decision of 2013, the surviving non-registered same-sex partner is exempted from paying inheritance tax (for more on the decision see question 6.3, "Inheritance").</p>	

Jurisdiction: **Slovenia**

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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 2012	2015 N/A 0000	2015 N/A 0000	2015 Yes, but 2005	2015 Yes, but 1992	2015 No 0000
Yes, but 1992			N/A 0000	? 0000	
? 0000					
References to legal sources: Art. 53(1) of Pension and Disability Insurance Act (ZPIZ-2, Official gazette RS, No. 96/2012 of 14.12.2012).		References to legal sources: Art. 7, 53(1) and 54 of Pension and Disability Insurance Act (ZPIZ-2, Official gazette RS, No. 96/2012 of 14.12.2012).		References to legal sources: Art. 7, 53(1) and 54 of Pension and Disability Insurance Act (ZPIZ-2, Official gazette RS, No. 96/2012 of 14.12.2012).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: The conditions for a spouse to be eligible for a survivor's pension are: being at least 58 years of age at the time of the death; incapability for work (or becoming incapable within a year of his death); or being obliged to provide alimony for a child that has a right to the deceased's pension. The condition regarding the age has changed slightly over the years and is now set at 58.</p> <p>The date 1992 is noted because that is the year the first Pension and Disability Insurance Act was adopted in the independent Republic of Slovenia (ZPIZ, Official gazette RS, No. 12/92 of 13. 3. 1992).</p>		<p>Explanations and nuances: The same conditions apply for a registered partner to be eligible for a survivor's pension as they do for a spouse.</p>		<p>Explanations and nuances: The condition for a widowed (different-sex) partner to be eligible for a survivor's pension is that they lived in cohabitation the last three years before the partner's death or that they lived in cohabitation for the past year before the partner's death and had a child together anytime in the past. In addition, the same conditions apply as for a spouse.</p> <p>The date 1992 is noted because that is the year the first Pension and Disability Insurance Act was adopted in the independent Republic of Slovenia (ZPIZ, Official gazette RS, No. 12/92 of 13. 3. 1992).</p>	

Jurisdiction: **Slovenia**

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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 2001	2015 N/A 0000	2015 N/A 0000	2015 No 2005	2015 Yes 2001	2015 No 0000
Yes 1978			N/A 0000	Yes 1978	
? 0000				? 0000	
References to legal sources: Art. 179(1) and 180(1) of the Code of Obligations (OZ, Official gazette RS, No. 83/01 of 25.19.2001). Art. 201 of the Obligations Act (ZOR, Official gazette SRS, No. 201 29/78 of 30.3.1978).		References to legal sources:		References to legal sources: Art. 179(1) and 180(4) of the Code of Obligations (OZ, Official gazette RS, No. 83/01 of 25.19.2001). Art. 201 of the Obligations Act (ZOR, Official gazette SRS, No. 201 29/78 of 30.3.1978).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: If a person dies or becomes seriously disabled the court may award just monetary compensation to his/her close family members (spouse, children and parents) for their mental distress.</p>		<p>Explanations and nuances:</p>		<p>Explanations and nuances: The court may award compensation to the different-sex cohabitant of the deceased if they have been living in cohabitation for a longer period of time.</p>	