

Cohabitees and their joint home

On 1 July 2003, a new Cohabitees Act will enter into force. The Cohabitees Act will replace the 1988 Cohabitees (Joint Homes) Act. However, many of the provisions in the new Cohabitees Act correspond to the provisions of the 1988 Act.

The Cohabitees Act contains provisions on the division of the joint home (division of property) when a cohabitee relationship ends. It is important, not least for those who are in a cohabitee relationship, to be aware that the protection provided by the Cohabitees Act is limited in relation to that provided for married couples and registered partners. To give an example, the Cohabitees Act applies only to the cohabitees' joint home and their joint household goods. In addition, cohabitees have no right to inherit from one another.

The Cohabitees Act aims at providing minimum protection for the weaker partner when a cohabitee relationship ends. The Act regulates the division of the home and household goods that have been purchased to be used jointly and are thus included as part of the joint home. The main rule in such a division of property is that the value of the joint home and joint household goods shall be divided equally between the cohabitees.

Through the Cohabitees Act, cohabitees are thus equated with spouses and registered partners as regards the home that has been jointly built up. Furthermore, there are quite a number of provisions under, for example, tax legislation and within social insurance that equate cohabitees with spouses/registered partners, particularly when the cohabitees have or have had children together.

At the same time, it is important to be aware that in many respects—particularly regarding the relationship between the cohabitees themselves—the rules applying to cohabitees differ from those applying to married couples or registered partners. One example that may be mentioned is that cohabitees have no maintenance obligation towards one another, not even after a very long-lasting relationship. The right of cohabitees to division of property only includes their home and household goods. Bank assets, cars and summer cottages, for example, fall outside the division

Common questions on the Cohabitees Act

Is the protection of the financially weaker party equal, irrespective of whether one is married/a registered partner or a cohabitee?

No, the protection given by the Cohabitees Act is considerably more limited than that for married persons/registered partners.

Can cohabitees choose to keep their financial affairs separate?

By making a written agreement, cohabitees can agree that division of property will not take place or that certain property will not be included in the division of property. The right of one cohabitee, in certain cases, to take over the dwelling of the other cohabitee cannot however be waived by an agreement between them.

Should the dwelling and furniture purchased or inherited before becoming a cohabitee be included in any future division of property?

No, since the dwelling and furniture were not acquired for joint use, they should not be included in the division of property.

What applies when one sells a dwelling owned prior to becoming a cohabitee and uses the money to buy a new dwelling which becomes the cohabitees' joint dwelling?

The first dwelling is not subject to the division of property rules as it was not acquired for joint use. However, the second dwelling was acquired for joint use and should therefore be included in the division of property.

Can a dwelling be included in a division of property if only one cohabitee is named in the contract?

Yes, the decisive factor for whether the dwelling should be included in the division of property is whether it was acquired for joint use and has been used as a joint dwelling.

What can you do if it is not possible to agree on how the property should be divided?

You can turn to the district court and request that an executor be appointed to divide the property.

Do cohabitees inherit from each other?

Cohabitees have no automatic right to inherit from one another. If cohabitees are to inherit from one another they must therefore draw up a will.

of property and the cohabitee owning the property retains it after a separation. Nor are cohabitees entitled to inherit from each other, unless they have written a will making such a provision.

Cohabitees

The term cohabitees refers to two people who live together on a permanent basis as a couple and who have a joint household. Whether the cohabitees are of opposite sexes or of the same sex is of no importance.

A criterion for a cohabitee relationship is thus that the persons *live together on a permanent basis*. Thus, it is a question of relationships that are not of too short a duration. The other criterion for a cohabitee relationship is that the partners live together *as a couple*. This means that they should live together in a partnership that normally includes sexual relations. The third criterion is that the partners have a *joint household*. By a joint household is meant that the cohabitees share chores and expenses and thus cooperate in daily activities at home, and that they have joint financial affairs, or at least such financial cooperation as could be called a joint household.

Hence, for example, two siblings living together may not be considered to be cohabitees.

Who does the Cohabitees Act apply to?

The Cohabitees Act applies only to cohabitee relationships in which neither of the cohabitees is married or a registered partner.

Cohabitees who wish to keep their financial affairs completely separate may conclude an agreement to the effect that the rules on division of property contained in the Cohabitees Act shall not apply to their cohabitee relationship. They may also agree that certain property shall not be included in the division of property. The agreement shall be in writing and signed by the cohabitees or the prospective cohabitees. It will not be registered and does not need to be attested.

What property is covered by the Cohabitees Act?

The Cohabitees Act applies only to

- the cohabitees' joint home, and
- the cohabitees' joint household goods.

A home means all types of permanent dwellings (detached houses, apartments) and the equipment which is normally part of the home, such as furniture and domestic appliances. However, the Act does not cover, for example, holiday cottages or equipment in such cottages. Since the Act only applies to the home and household goods, its provisions do not cover

other property such as, for example, bank assets, shares, cars and boats. Such assets fall outside the division of property and the cohabitee who owns the property retains it after a separation.

Conditions during the cohabitee relationship

The main rule is that each cohabitee in a cohabitee relationship owns and manages his/her property him/herself and is responsible for his/her debts. As in the case of married couples or registered partnerships there are, however, certain limitations on a cohabitee's possibilities of disposing of his/her property. A cohabitee may not, without the consent of the other cohabitee, sell, give away mortgage/pledge or let the joint home. Nor may a cohabitee, without the consent of the other, sell, give away or pawn joint household goods.

If cohabitees live in property which one of the cohabitees is the registered owner of, or holds the site leaseholdership right for, they may enter in the register that the property is their joint home by applying to the property registration authority (the district court). A note in the register to this effect can be a guarantee that the cohabitee who owns the property does not sell or mortgage it without the consent of the other cohabitee.

Division of property when the cohabitee relationship ends

A cohabitee relationship ends

- if the cohabitees or one of them enter/s into matrimony or registered partnership,
- if the cohabitees separate, or
- if one of the cohabitees dies.

A cohabitee relationship is also considered to have ended if one cohabitee applies for the appointment of an executor to divide the property, or for the right to remain in a joint dwelling included in the division of property or if one of the cohabitees institutes an action to be allowed to take over a joint home not included in the division of property. When a cohabitee relationship ends, a division of property shall be made at the request of either of the cohabitees. If the cohabitee relationship ends as a result of the death of one of the cohabitees, only the surviving cohabitee may request a division of property. The heirs to the deceased cohabitee are not, however, entitled to make such a request. If neither party requests a division of property, each retains his/her own property.

A request for division of property shall be made not later than one year after the cohabitee relationship ended. If a cohabitee relationship ends following the death of one of the cohabitees or if a

cohabitee dies within one year of the end of a relationship, a request shall be made no later than when the estate inventory is drawn up.

A division of property includes the cohabitees' joint dwelling and household goods if the property "*was acquired for joint use*". Who paid for the property is of no account. Other property cannot be drawn into the division of property. An important restriction is that the dwelling and household goods were acquired for joint use. If one of the parties has moved into the other's dwelling, that dwelling is not subject to the division of property rules of the Cohabitees Act, even if the couple shared the mortgage repayments and other costs. However, if such a dwelling has been sold and the money used for a new joint dwelling, the new dwelling shall be included in the division of property.

Before the division of property takes place, a deduction is made to cover debts. What remains shall, in principle, be divided equally between the cohabitees. The cohabitee most in need of the dwelling or household goods is entitled to receive the property if this is reasonable. If the other cohabitee does not receive other property from the joint home to the same value, the cohabitee taking over the dwelling or household goods shall pay a corresponding sum of money.

Exceptions to the rule on a fifty-fifty share

Exceptions from the fifty-fifty share may be made if this would lead to an unreasonable result, particularly with regard to how long the relationship has lasted. In special cases, such as after very short cohabitee relationships, adjustment can be made so that each of the parties simply retains his or her own property.

Another exception to the fifty-fifty division is the so-called small base amount rule. This rule only applies in the event of the death of one cohabitee and means that out of the property to be divided, the surviving cohabitee always – if there is sufficient property – receives as much as corresponds to two price base amounts (SEK 77 200 in 2003).

Taking over the other cohabitee's dwelling

A tenant-owner (condominium) or tenancy right that was not acquired for joint use but which nevertheless has been used jointly, is not, of course, included in the division of property. On the other hand, the cohabitee most in need of the dwelling may take it over from the other cohabitee. However, if the cohabitees have no children, there must be extraordinary reasons for taking it over. The party taking over the dwelling shall fully compensate the other for the value of the dwelling. Cohabitees cannot waive the right to take over the dwelling by agreement.

Claims to take over a tenancy or tenant-owner right shall be made no later than one year after the cohabitee relationship ended. If the cohabitee leaves the dwelling, however, the claim must be submitted no later than three months thereafter. The respite of one year does not apply if the cohabitee who owns the dwelling dies and the surviving cohabitee remains in the dwelling.

Children

Contrary to what applies to children born in marriage, paternity must be established by special order for a child whose parents are not married. This also applies to unmarried parents who are cohabitees.

Only the mother of a child of unmarried parents is granted custody, even if the parents are cohabitees. However, the parents may obtain joint custody by jointly applying to the tax authority or the social services committee in connection with confirmation of paternity, and registering the child.

It is not possible for an unmarried cohabitee couple to jointly adopt a child.



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