

DEALING WITH COHABITATION IN SWEDEN

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Sweden is a country where couples have been living together without being married for quite some time and in larger numbers.

However, in the past few years it seems that marriage has become more popular each year.

In 2005 43.800 couples married. That was an increase of 2 % compared to 2004. Most couples married during summer time.

The same year 19.800 marriages ended in a divorce, which was 1 % less than 2004.

The number of divorces increased constantly until the seventies. Thereafter it has been quite stable, around 20.000 divorces each year.

The number of registered partnerships increased a little that year compared to 2004 and also the number of finalised partnerships.

2006 we had a population in Sweden of 9.047.400 people. About 16,1 % have a background from other foreign countries.

Most people in Sweden who marry have lived together, cohabited, for a period of time before marriage. Many of them also have children together. Statistic shows that they have lived together more than two years before they marry. Cohabitation is more common in Sweden and in Denmark than in other countries. Today almost twice as many women in the age of 20-24 as men are cohabiting.

COHABITEES ACT

Having said this, you may understand that there is and has been a strong need to regulate cohabitation in Sweden and that has been done. There is a Cohabitees Act which was entered into force on July 1, 2003, SFS 2003:376. It replaced the 1987 Cohabitees Act also called Joint Home Act.

Most of the new act corresponds with the first act. However, the new act has a more generally applicable and clearer definition of cohabitation and cohabitees. It also specifies when a cohabitee relation shall be considered to have ended.

MINIMUM PROTECTION

The legislation provides a minimum protection for the weaker partner when a cohabitee relationship ends.

It only regulates the division of the joint home and the joint property, the cohabitees' rights to take over a dwelling not included in the division of property and some limitations on right to dispose of the joint home. It is important to know that this act provides a limited protection compared to what is provided for married couples and registered partners.

REGISTERED PARTNERSHIPS

I just mentioned registered partners. There is a specific act, 1994:1117 on registered partnership and it is applicable on two partners of the same sex. If two partners have registered their partnership they are granted the same rights as two married people with the exception of divorce and jurisdiction.

A partnership registered that shall be ended has to be filed to the court but is not a case of divorce but a case of ending a partnership. However, it is the same procedure. The case can always be handled by a Swedish court if partnership has been registered due to the Swedish law of partnership. Registration can not be done if one partner or both are married or registered partners. The minimum age for someone to register partnership is 18 years. You may not register partnership between father/son or mother/daughter neither between brothers or sisters. Stepsisters and brothers may apply for and get permission from the

authorities. Adopted father/ son and mother/daughter may not register partnership but sisters/brothers can apply and get permission.

A partnership may be registered in Sweden if one of the partners has been domiciled in Sweden more than two years. If one of the partners is a citizen of Sweden, Denmark, Norway, Iceland or the Netherlands there is no need for having been domiciled in Sweden at least two years.

WHO IS CONSIDERED COHABITEE?

Two people living together on a permanent basis as a couple and who have a joint household. Whether they are of opposite sexes or same makes no difference. There are three criteria. The cohabitee must live with his or her partner on a permanent basis. The cohabitee and his partner must live together as a couple, which means that the parties live together in a partnership normally including a sexual relation. The cohabitee must share household with his or her partner which means sharing chores and expenses.

POSSIBILITY TO MAKE AGREEMENTS

The Cohabitees Act applies on the true relationships in which neither one of the cohabitees is married or a registered partner. If two cohabitees want to keep the financial affairs separate, they may conclude an agreement to the effect that the rules on division of property contained in this act shall not apply. They may also agree that certain property shall not be included. The agreement shall be in writing and signed by the cohabitees. The act applies only to the cohabitees joint home and their joint property. Home means all types of permanent dwelling, such as houses, apartments and joint property, the equipment which is normally part of such a home, like furniture, household, goods etc. . The act does not cover other property, such as for example bank assets, shares, cars, boats or summerhouse. Assets like that fall outside the division of property. The main rule therefore is that the cohabitee owns and manages his or her property himself and is responsibly for his/her own debts.

DISPOSAL OF PROPERTY

There are certain limitations on cohabitees possibilities to dispose their property like in registered partnerships or between married couples. A cohabitee may not, without consent of the other cohabitee, give away, mortgage or let the joint home. Nor may he or she sell or give away joint household goods.

WHEN DOES A COHABITATION END?

The cohabitee relationship ends when the cohabitees or one of them enters into matrimony or registered partnership, if they separate or if one of them dies. The relationship also ends if one or both apply to the district court to appoint an executor to divide the property or applies for a right to remain in a joint home, included in the division of property, and also, if one of the cohabitees institutes an action to be allowed to take over a joint home, not included in the division of property.

DIVISION OF PROPERTY

Division of property includes the joint dwelling and household goods if the property was acquired for joint use. The rules on division of property set out in this act do not apply if one of the parties has moved into the other parties dwelling, even if they have shared amortisation or other costs. However, if they sell such property and use the money for the new joint home, the new dwelling will be included in the division. Before the division takes place there has to be a deduction to cover debts and what remains shall be divided equally. The one cohabitee who has the most need of the dwelling or the house is entitled to receive the property if this is reasonable. If one cohabitee gets less than the others, he has to be compensated.

There are a few exceptions to the division and that is if the division would be unreasonable, particularly bearing in mind how long the relationship has lasted and therefore in special cases adjustment can be made. There is also a so called base amounts rule which gives the surviving cohabitee a right to get at least the same amount as two price base amounts in the division. The amount is around 80.000 Swedish Kronor.

RIGHT TO THE JOINT HOME

A right to a condominium or tenancy that has not been acquired for joint use is not included in the division of property. On the other hand the partner who has the best need to that dwelling may get the right to take over from the other cohabitee and especially if there are children, this would be the case. However, the party who takes over the dwelling should fully compensate the other for the value of dwelling. This is however quite difficult if for example the two partners have a rented apartment that cannot be sold. The claim for right to take over a tenancy has to be made within one year after the relationship ended.

PATERNITY AND CUSTODY

There are some details that cohabitees should really bear in mind. Contrary to what applies to children born in marriage, paternity must be specifically established for a child whose parents are not married. This also applies to unmarried couples who are cohabitees. When a child is born the mother is granted the custody. However the parents may obtain joint custody by an application to the tax authority or the social services with confirmation of paternity and registering that they have joint custody.

ADOPTION

Cohabitees can not jointly adopt a child.

Registered partners may adopt together and the same rules apply to them as married couples.

INHERITANCE

Cohabitees have no automatic right to inherit one another. If they want to inherit each other they must make a will.

Registered partners inherit each other just like married couples

MAINTENANCE

Cohabitees have no maintenance obligations to one another, not even after a very long partnership

Registered partners may sometimes have to pay maintenance for a separated partner even though generally maintenance is rather unusual in Sweden even between former spouses.

Swedish views on possibility for same sex couples to marry.

Norway has already decided to allow same sex couples to marry, They have made their marriage law neutral with the result that same sex couples may enter into marriage beginning 2009.

In Sweden there is a strong majority for same sex marriage. Seven out of ten Swedes believe that same sex marriage shall be permitted and the government have started to prepare a proposition in order to make it possible.

Obviously only one political party, the Christian Democratic Party works against this proposition.

Therefore it is expected for Sweden to have same sex marriage within shortly.