

## **NATIONAL REPORT: NORWAY**

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### **A. General**

- 1. What kinds of formal relationships between a couple (e.g. different/same-sex marriage, different/same-sex registered partnership, etc.) are regulated by legislation? Briefly indicate the current legislation.**

Marriage is regulated by the Norwegian Marriage Act 1991. In 2008, an amendment to the Act gave same-sex couples the right to enter into marriage on the same basis as different-sex couples. Before this legislation came into force on 1 January 2009, two people of the same sex were allowed to register their partnership and thus obtain the same rights as married couples throughout the legal system with very few exceptions. However, this opportunity to register partnerships is no longer available – the Registered Partnership Act 1993 was repealed as of 1 January 2009 when the Marriage Act was amended to include same-sex couples. Existing partnerships will still remain in force, and registered partners can have their partnerships converted into marriage, if they agree.<sup>1</sup>

- 2. To what extent, if at all, are informal relationships between a couple regulated by specific legislative provisions? Where applicable, briefly indicate the current specific legislation. Are there circumstances (e.g. the existence of a marriage or registered partnership with another person, a partner's minority) which disqualify the couple?**

Informal relationships remain largely unregulated by statute. Most striking in this respect is the fact that there are no specific legislative provisions for regulating the financial consequences of the termination of cohabitation. The Norwegian Household Community Act 1991<sup>2</sup> applies to cohabitants and other people who live together in a household. However, this act only provides a limited opportunity for a household member to purchase what was previously the common residence and household goods at market value upon the termination of the household.

The Norwegian Household Community Act applies to two or more unmarried adults who have lived together in a household, and includes cohabitants, siblings, students and others who live together. Thus, a marriage or a registered partnership will disqualify the couple.

In 2008 Parliament enacted a law which gave unmarried cohabitants who have

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<sup>1</sup> The Norwegian Marriage Act, S. 95.

<sup>2</sup> The Norwegian Act relating to the right to the joint residence and household goods when a household community ceases to exist 1991 (The Norwegian Household Community Act).

children together<sup>3</sup> a right to either inherit approximately 40,000 Euros or to postpone the settlement and keep part of the deceased's estate undivided.<sup>4</sup> In this law, cohabitation is defined as two people above the age of eighteen living together in a marriage-like relationship as long as they are not married, registered partners or cohabiting with others.<sup>5</sup> Same-sex couples are included in this definition. The two people must permanently reside together, but it is expressly stated that shorter periods of separation due to education, work, illness and the like are no disqualification. Two people who are so closely related that they cannot marry are excluded from the definition.<sup>6</sup>

**3. In the absence of specific legislative provisions, are there circumstances (e.g. through the application of the law of obligations or the law of property) under which informal relationships between a couple are given legal effect (e.g. through the application of the law of obligations or the law of property)? Where applicable briefly indicate the leading cases**

In cohabitation, non-statutory legal precedent for acquiring co-ownership emerged through Supreme Court practice in the 1970s and 80s.<sup>7</sup> As long as the cohabitants have not agreed who is to be deemed the owner of particular items of property, co-ownership may be established based on the cohabitants' indirect contribution in the form of domestic work and/or payment of the family's expenses. This method of acquisition departs sharply from the traditional methods of acquiring co-ownership, and is only recognised in cohabitation and in marriage.<sup>8</sup> The rule covers not only the common residence, but also other items of property for common personal use, e.g. a second home, a car or a boat.

In order to establish co-ownership, two conditions must be met: both parties must have contributed – directly or indirectly – to the acquisition, and the acquisition must constitute a joint project. Co-ownership is determined on the basis of a discretionary assessment of the size and nature of the contributions and the joint project. In practice, a homemaker's indirect contributions in the form of care for small children are sufficient in the majority of cases to make her/him an equal co-owner of an item bought by the breadwinner with income earned during the same period of time. If the children are of compulsory school age and the homemaker still works full-time at home, her/his work will normally constitute a lesser contribution.

In practice, co-ownership limits the exclusive right of the cohabitants to dispose of an item, and the creditors must respect this co-ownership as well. However, the greatest overall financial significance of such co-ownership occurs when the cohabitants

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<sup>3</sup> This implies that they have, have had or expect a child together.

<sup>4</sup> The Norwegian Inheritance Act, S. 28(b) and 28(c). The law came into force on 1 July 2009.

<sup>5</sup> See the Norwegian Inheritance Act, Chapter III A and J. ASLAND and P. HAMBRO, 'New Developments and Expansion of Relationships Covered by Norwegian Law', in: B. ATKIN (ed.), *The International Survey of Family Law*, Jordan Publishing Limited, Bristol, 2009, pp. 378-384.

<sup>6</sup> The Norwegian Inheritance Act, S. 28(a).

<sup>7</sup> Rt. 1978 p. 1352 and Rt. 1984 p. 497. P. LØDRUP and T. SVERDRUP, *Familieretten*, 2011, at Chapter 7.

<sup>8</sup> For marriage, this rule is codified in the Norwegian Marriage Act, S. 31 third paragraph.

separate. Upon dissolution, each cohabitant retains his or her property and his or her debts.

Compensation to avert unjust enrichment may also be granted on termination of the relationship. These non-statutory rules developed through Supreme Court practice in the 1980s, see Norwegian Supreme Court Reports in Rt. 1984 p. 497, Rt. 2000 p. 1089 and Rt. 2011 p. 1168. The cohabitant must have provided the other party with a significant financial benefit in order to receive any compensation. In addition, the granting of compensation must be reasonable. Compensation is only to be granted in exceptional cases. These case-law rules have proved to be ill-suited to correct imbalances in settlements after relationship breakdown. In contrast to the precisely phrased laws with predictable outcomes found in other areas of family law, they contain a degree of ambiguity, leading to an increased level of litigation. The weaker party will often find it too costly to enforce her/his rights through the legal system, especially since compensation is rarely granted. Furthermore, general impressions seem to suggest that a whole range of details are given legal relevance in practice. An unlimited number of facts and incidents are subject to dispute and the rules seem to create conflicts.

#### **4. How are informal relationships between a couple defined by either legislation and/or case law? Do these definitions vary according to the context?**

The Norwegian Inheritance Act 1972, S. 28(a) first paragraph, defines cohabitation as follows: 'Two people over the age of 18 who are neither married, registered partners nor cohabitants with others, living together in a marriage-like relationship.' This definition includes both opposite-sex and same-sex couples. The core of the definition is 'marriage-like', which means that they must constitute a couple, although it is not a condition that they must have a sexual relationship. Two students living together for practical reasons without being a couple are not, however, cohabitants in the sense of the law.<sup>9</sup> This definition of cohabitation is limited to the Norwegian Inheritance Act, but similar definitions would apply in case law concerning co-ownership and cohabitation.<sup>10</sup>

Pursuant to the Norwegian Inheritance Act, S. 28(a) second paragraph, the partners can still be considered cohabitants, even if they live apart for some time due to education, work, illness, a stay in an institution or other similar circumstances. The preparatory works state that a permanent stay in a nursing home does not in itself preclude inheritance rights. Professor John Asland considers that long prison terms should be considered in the same way.<sup>11</sup> Moreover, pursuant to S. 28(a) second paragraph, it is not considered to be a cohabitation when two persons who according to the Norwegian Marriage Act, S. 3 (prohibition against marriage between close

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<sup>9</sup> J. ASLAND, 'Gjenlevende samboers rettsstilling', in: J. ASLAND et al. (eds.), *Nordisk samboerrett*, Gyldendal Juridisk, Oslo, 2014, at p. 183-184.

<sup>10</sup> P. LØDRUP and T. SVERDRUP, *Familieretten*, 2011, at p. 336-337.

<sup>11</sup> J. ASLAND, 'Gjenlevende samboers rettsstilling', in: J. ASLAND et al. (eds.), *Nordisk samboerrett*, Gyldendal Juridisk, Oslo, 2014, at p. 185-186.

relatives) cannot marry, live together.

**5. Where informal relationships between a couple have legal effect:**

**a. When does the relevant relationship begin?**

Pursuant to the Norwegian Inheritance Act, the cohabitation begins when the two parties are living together in a marriage-like relationship in accordance with the definition in S. 28(a), i.e. two people who are neither married, registered partners nor cohabitants with others. The partners can be considered cohabitants even if they live apart for some time due to education, work etc. However, only cohabitants who have common children<sup>12</sup> have the right to inherit and the right to undivided possession of assets, see sections 28(b) and 28(c).

**b. When does the relevant relationship end?**

Pursuant to the Inheritance Act 1972, for the cohabitation to end, there has to be a breach in the relationship, in other words, they are not a couple anymore. In exceptional cases, cohabitation may be deemed to have ended even if the parties have not ceased living together. Failure to move out may be due to the parties' fear of placing themselves in a disadvantageous position in terms of property distribution pursuant to the Norwegian Household Community Act. If a demand has been made to take over the joint dwelling before one of the parties dies, physical separation/moving apart should not be necessary.<sup>13</sup>

**6. To what extent, if at all, has the national constitutional position been relevant to the legal position of informal relationships between a couple?**

The national constitutional position has not been relevant to the legal position of informal relationship.

**7. To what extent, if at all, have international instruments (such as the European Convention on Human Rights) and European legislation (treaties, regulations, and directives) been relevant in your jurisdiction to the legal position of informal relationships between a couple?**

International instruments (such as the European Convention on Human Rights) and European legislation have so far not been relevant to the legal position of informal couple relationship.

**8. Give a brief history of the main developments and the most recent reforms of the rules regarding informal relationships between a couple. Briefly indicate the purpose behind the law reforms and, where relevant, the main reasons for not adopting a proposal.**

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<sup>12</sup> More precisely 'have, have had or are expecting children together'.

<sup>13</sup> J. ASLAND, 'Gjenlevende samboers rettsstilling', in: J. ASLAND et al. (eds.), *Nordisk samboerrett*, Gyldendal Juridisk, Oslo, 2014, at p. 185.

Unmarried cohabitation was punishable right up until the 1970s; however, the provision had not been enforced for a long time. Proposals to repeal the criminal provision were put forward both in 1925 and in 1953, and the provision was finally repealed in 1972.<sup>14</sup> The increase in the number of cohabiting couples in the 1970s led to the appointment of the first law committee in 1976. Several public reports were published during the 1980s and 1990s; however, only minor changes in the legal position were suggested in the field of family law. The Norwegian Household Community Act 1991 gave members of a household a limited right to acquire the previous family home and household goods at market value. The Christian Democrats believed that legislation would undermine the status of marriage and the Social Democrats did not have any strong desire for legislation. The legislature's willingness to enact statutory regulation was stronger in the field of inheritance law. The law commission of 1999 as well as the White Paper in 2003 suggested that a surviving cohabitant should keep part of the deceased cohabitant's estate undivided if the cohabitants had had children together. In 2008, a law to this effect was enacted along with a limited right to inherit.

**9. Are there any recent proposals (e.g. by Parliament, law commissions or similar bodies) for reform in this area?**

Currently no proposals exist for reform in this area.

**B. Statistics and estimations**

**10. How many marriages and, if permissible, other formalised relationships (such as registered partnerships and civil unions) have been concluded per annum? How do these figures relate to the size of the population and the age profile? Where relevant and available, please provide information on the gender of the couple.**

A total of 22,887 couples got married in 2014, which is 523 fewer marriages than in 2013.<sup>15</sup>

At the end of 2014, the total population of Norway was 5,165,000 people.<sup>16</sup> Approximately 344,000 people were between 20–24 years old, and of these only 10,700 were married. The age group 24–29 consisted of about 355,000 people and 62,500 of them were married. In comparison, for the age group 55–59 about 189,000 out of 315,000 people were married.<sup>17</sup>

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<sup>14</sup> The Norwegian Criminal Code 1902, S. 379, NOU 1999: 25 chapter 8.3.1.

<sup>15</sup> Statistics Norway, 'Marriages and divorces 2014', available at: [www.ssb.no/en/befolkning/statistikker/ekteskap](http://www.ssb.no/en/befolkning/statistikker/ekteskap).

<sup>16</sup> Statistics Norway, 'Population and population changes, Q4 2014', available at: [www.ssb.no/en/befolkning/statistikker/folkendrkv/kvartal](http://www.ssb.no/en/befolkning/statistikker/folkendrkv/kvartal).

<sup>17</sup> Statistics Norway, 'Population, 1 January 2015', available at: [www.ssb.no/en/befolkning/statistikker/folkemengde/aar/2015-02-19?fane=tabell&sort=nummer&tabell=218740](http://www.ssb.no/en/befolkning/statistikker/folkemengde/aar/2015-02-19?fane=tabell&sort=nummer&tabell=218740).

From 1992 to 2000, the number of contracted marriages increased from 18,600 to a peak of 25,500 couples in 2000. In the period 2001-2005 the annual average was 23,000 and in the period 2006-2010 the annual average was 23,800 married couples.<sup>18</sup>

In 2014, a total of 269 same-sex couples got married – 106 of them were male couples and 163 female couples.<sup>19</sup> The number of married same-sex couples has remained stable since the new marriage legislation was introduced on 1 January 2009. Earlier, between 1993 and 2008, same-sex couples could register their partnerships. Between 2001 and 2007 there were an average of 207 registered partnerships per year.<sup>20</sup>

**11. How many couples are living in an informal relationship in your jurisdiction? Where possible, indicate trends.**

In 2014, about 315,000 couples (630,000 people) were living in an informal relationship.<sup>21</sup>

Among the country's 3.9 million inhabitants aged 18 years and over, 2.34 million people were living in a relationship as a couple. Of these, 73% were married and 27% were cohabiting couples. Not surprisingly, informal relationships are more popular among the younger age groups. 72 percent of all people aged between 18 and 29 who are living as part of a couple are cohabiting. For the age group 30-44, 63 percent of the couples are married couples. Among those 67 years and over, 95 percent of the couples are married couples.<sup>22</sup>

The proportion of cohabitants compared with married people has risen steadily. Between the years 1993-95, 20 percent of all couples were cohabiting couples. The proportion increased to 25 percent in 2004, 26 percent in 2011<sup>23</sup> and 27 percent in 2014.

**12. What percentage of the persons living in an informal relationship are:**

**a. Under 25 years of age?**

'Under 25 years', i.e. age group 16-24: 14.5 percent are living in an informal

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<sup>18</sup> Statistics Norway, 'Marriages and divorces 2014', available at: [www.ssb.no/en/befolkning/statistikker/ekteskap](http://www.ssb.no/en/befolkning/statistikker/ekteskap).

<sup>19</sup> Statistics Norway, 'Marriages and divorces 2014', available at: [www.ssb.no/en/befolkning/statistikker/ekteskap](http://www.ssb.no/en/befolkning/statistikker/ekteskap).

<sup>20</sup> Statistics Norway, 'Fra registret partnerskap til felles ekteskapslov', available at: [www.ssb.no/befolkning/artikler-og-publikasjoner/fra-registrert-partnerskap-til-felles-ekteskapslov](http://www.ssb.no/befolkning/artikler-og-publikasjoner/fra-registrert-partnerskap-til-felles-ekteskapslov).

<sup>21</sup> Statistics Norway, available at: [www.ssb.no/statistikkbanken](http://www.ssb.no/statistikkbanken). The number of cohabitants in 2013 was 573,000, but figures from 2014 cannot easily be compared with figures from 2013 and earlier, as changes have resulted in a break in the time series.

<sup>22</sup> Statistics Norway, 'Families and households, 1 January 2014', available at: [www.ssb.no/en/befolkning/statistikker/familie/](http://www.ssb.no/en/befolkning/statistikker/familie/).

<sup>23</sup> Statistics Norway, 'Cohabitants, 2011', available at: [www.ssb.no/en/befolkning/statistikker/samboer](http://www.ssb.no/en/befolkning/statistikker/samboer).

relationship.<sup>24</sup>

**b. Between 26-40 years of age?**

Age group 25–39: 50.7 percent are living in an informal relationship.

**c. Between 41-50 years of age?**

Age group 40–49: 19.5 percent are living in an informal relationship.

**d. Between 51-65 years of age?**

Age group 50–64: 12 percent are living in an informal relationship.

**e. Older?**

Age group 65–79: 3 percent are living in an informal relationship, and amongst people of 80 years and over, 0.3 percent are living in an informal relationship.

**13. How many couples living in an informal relationship enter into a formal relationship with each other:**

**a. Where there is a common child?**

Of women born between 1945 and 1968 who had their first child in an informal relationship, more than 50 percent were married within five years after the child was born.<sup>25</sup>

**b. Where there is no common child?**

No available statistics.

For both a and b, of women born between 1960 and 1969, 42 percent of them who had lived in an informal relationship were married before 1997. Of women born between 1950 and 1959 the corresponding figure was 64 percent and of women born between 1940 and 1949 75 percent of them were married before 1997.<sup>26</sup>

**14. How many informal relationships are terminated:**

**a. Through separation of the partners?**

Among couples with children that were cohabiting in 2005, about 189 cohabitants per 1,000 cohabitants had experienced termination of the relationship through separation during the eight-year period 2005–2013.

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<sup>24</sup> See T. NOACK, *En stille revolusjon. Det moderne samboerskapet i Norge*, Unipub, Oslo, 2010, at p. 96-97.

<sup>25</sup> T. NOACK, *En stille revolusjon. Det moderne samboerskapet i Norge*, Unipub, Oslo, 2010, at p. 103.

<sup>26</sup> T. NOACK, *En stille revolusjon. Det moderne samboerskapet i Norge*, Unipub, Oslo, 2010, at p. 116 with further references.

The corresponding number among cohabitants without children was much higher, 301 per 1,000 cohabitants.

**b. Through the death of one of the partners?**

Among couples with children that were cohabiting in 2005, about 7 cohabitants per 1,000 cohabitants had experienced termination of the relationship through death during the eight-year period of 2005–2013. The corresponding number among cohabitants without children was 40 per 1,000 cohabitants.<sup>27</sup>

**15. What is the average duration of an informal relationship before its termination? How does this compare with the average duration of formalised relationships?**

A survey<sup>28</sup> in 2001 found that 77 percent of cohabiting relationships lasted between 0 and 9 years, 22 percent lasted between 10 and 24 years and 1 percent lasted 25 years or more. The corresponding numbers for spouses were 24 percent, 29 percent and 40 percent respectively.

**16. What percentage of children are born outside a formal relationship? Of these children, what percentage are born in an informal relationship? Where possible, indicate trends.**

A total of about 57,000 children were born in 2014, and about 30,000 of these children were born outside a formal relationship, that is, 52 percent of the children were born outside marriage. Of these children, 22,756 children were born in a cohabiting relationship, and 6,869 children to a single mother. By comparison, in 2013, 56 percent of the children were born outside marriage. However, the long-term trend has been going in the opposite direction – more children are born outside a formal relationship. Compared to the period average of the ten-year period 2003–2013, the number of children born inside marriage has decreased by 8.6 percent, and the number of children born to a cohabiting mother has increased by 18.6 percent.<sup>29</sup>

**17. What is the proportion of children living within an informal relationship who are not the couple's common children (excluding foster children)?**

No available data.

**18. How many children are adopted within an informal relationship:**

**a. By one partner only?**

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<sup>27</sup> Register-based statistics from Statistics Norway processed in E. GOPLEN, *Barn i det moderne samboerskap - en bindende eller splittende faktor?*, Master's thesis, University of Oslo, 2014, table 3 at p. 32.

<sup>28</sup> Statistics Norway's Omnibus survey 2001, available at: [www.ssb.no/a/samfunnsspeilet/utg/200301/05/](http://www.ssb.no/a/samfunnsspeilet/utg/200301/05/).

<sup>29</sup> Statistics Norway, 'Births, 2014', available at: [www.ssb.no/en/befolkning/statistikker/fodte](http://www.ssb.no/en/befolkning/statistikker/fodte).



No available data. Pursuant to the Norwegian Adoption Act 1986, a cohabitant could adopt individually until 1 October 2014. After this date such adoption is not allowed, see the Norwegian Adoption Act, S. 5.

**b. Jointly by the couple?**

No available data. Until 1 October 2014, cohabiting couples were not eligible to adopt a child jointly. After this date, cohabitants can adopt jointly, see the Norwegian Adoption Act, S. 5.

**c. Where one partner adopted the child of the other?**

No available data. Until 1 October 2014, a cohabitant could not adopt the child of the other cohabitant. After this date, stepchild adoption is allowed, see the Norwegian Adoption Act, S. 5(b).

**19. How many partners in an informal relationship have been in a formal or an informal relationship previously?**

No available data.

**C. During the relationship**

**20. Are partners in an informal relationship under a duty to support each other, financially or otherwise:**

**a. Where there are no children in the household?**

Partners to an informal relationship are not under a duty to support each other in relationships where there are no children in the household.

**b. Where there are common children in the household?**

Partners to an informal relationship are not under a duty to support each other in relationships where there are children in the household.

**c. Where there are other children in the household?**

Partners to an informal relationship are not under a duty to support each other in relationships where there are other children in the household.

**21. Are partners in an informal relationship under a general duty to contribute to the costs and expenses of their household?**

Partners to an informal relationship are not under any general duty to contribute to the costs and expenses of their household.

**22. Does a partner in an informal relationship have a right to remain in the home**

**against the will of the partner who is the owner or the tenant of the home?**

When 'strong reasons' so indicate, a partner to an informal relationship (and other people living together in a household) may purchase what was previously the common residence and household goods at market value upon the termination of the household, pursuant to the Norwegian Household Community Act, S. 3. On the same strict conditions, a cohabitant may obtain the right to enter into a tenancy agreement even if the contract is established in the name of the other cohabitant. As the cohabitant is obliged to pay the market price and the conditions - 'strong reasons' - are strict, the Norwegian Household Community Act is not used very often. Sometimes the act is misused to permit one party to remain in the home even if there is no intention to buy out the other party.

**23. Are there specific rules on a partner's rights of occupancy of the home:**  
**a. In cases of domestic violence?**

There are no specific rules on a partner's rights of occupancy of the home in cases of domestic violence. The prosecuting authority may impose a ban not exceeding three months on visits to a person's own home if there is an imminent risk of domestic violence pursuant to the Norwegian Criminal Procedure Act 1981, S. 222a. Domestic violence might also be factor when assessing whether the non-owning cohabitant is to have the right to purchase or enter into a tenancy agreement pursuant to the Norwegian Household Community Act, S. 3.

**b. In cases where the partner owning or renting the home is absent?**

There are no specific rules on a partner's rights of occupancy of the home in cases where the partner owning or renting the home is absent. Pursuant to the Norwegian Missing Persons Act 2015, the remaining cohabitant has a duty to notify the district court about the absence and the court or the appointed guardian may decide on a partner's rights of occupancy of the home as well as on support. Moreover, pursuant to the Norwegian Household Community Act, absence could also be a factor in the assessment of whether to give the remaining cohabitant a right to purchase or enter into a tenancy agreement.

**24. Are there specific rules on transactions (e.g. disposal, mortgaging, subletting) concerning the home of partners in an informal relationship:**  
**a. Where the home is jointly owned by the partners?**

During the relationship, there are no specific rules on transactions concerning the home of partners to an informal relationship where the home is jointly owned by the partners. Unless otherwise agreed, a co-owner may freely dispose of his or her undivided share in the property pursuant to the Norwegian Act on Co-ownership, 1965, S. 10. (In these cases, the other co-owner has a pre-emptive right of purchase, S. 11.) However, special circumstances might lead to a restricted right to dispose of an item, pursuant to the Norwegian Act on Co-ownership, S. 1. This could well be the case when the property in question is the home of the partners.

**b. Where the home is owned by one of the partners?**

During the relationship, there are no specific rules on transactions concerning the home of partners to an informal relationship where the home is owned by one of the partners. Thus, the owners may freely sell or mortgage their homes, whether or not they are partners to an informal relationship.

**c. Where the home is jointly rented by the partners?**

During the relationship, there are no specific rules on transactions concerning the home of partners to an informal relationship where the home is jointly rented by the partners. When two people rent a dwelling together, one of them may terminate the tenancy, unless otherwise agreed. The right to sublet etc. depends on the agreement between the two tenants and between the tenants and the landlord.

**d. Where the home is rented by one of the partners?**

During the relationship, there are no specific rules on transactions concerning the home of partners to an informal relationship where the home is rented by one of the partners. The tenant is entitled to include a cohabitant as a member of his or her household, under the provisions of the Norwegian Tenancy Act 1999, S. 7-1. As a rule, a tenant has no right to sub-let or in any other way transfer his or her right of use to other people without the consent of the landlord unless otherwise provided in an agreement, S. 7-2.

**25. Under what circumstances and to what extent can one partner act as an agent for the other?**

Partners to an informal relationship may – like others – agree that one partner is to act as an agent for the other. However, such agreements must apply to specific and limited areas – a broad authorisation to act on behalf of the other party in all matters would be unlawful. General principles of agency, like agency without specific authorisation (*negotiorum gestio*), will also apply between cohabitants.

**26. Under what circumstances can partners in an informal relationship become joint owners of assets?**

In Norway, ownership is obtained regardless of registered title; a legal, enforceable agreement relating to land does not even have to be in writing. Partners to an informal relationship may become joint owners of assets in the same way as other people (contract, gift etc.) but, in addition, special rules for acquiring co-ownership in items for common personal use developed through Supreme Court practice in the 1970s and 80s, first in marriage and then in cohabitation, see Rt. 1978 p. 1352 and Rt. 1984 p. 497. These case-law rules apply unless the cohabitants have expressly agreed who is to be considered the owner.

As long as the cohabitants have not expressly agreed upon ownership, co-ownership in items for personal common use is based on what the parties contributed to the acquisition. Not only direct, but also indirect contributions in the form of domestic work and/or payment of the family's expenses are acknowledged. In order to establish co-ownership, the acquisition must constitute a joint project.<sup>30</sup> Co-ownership is determined on the basis of a discretionary assessment of these factors. Assuming the conclusion is co-ownership, the partners own an equal part unless circumstances justify a different fraction of ownership, the Norwegian Co-ownership Act, S. 2.

**27. To what extent, if at all, are there specific rules governing acquisitions and/or transactions in respect of household goods? In answering this question briefly explain what is meant by household goods.**

During the relationship, no specific rules govern acquisitions or transactions in respect of household goods. Household goods are items of property that are usually kept inside a home, like furniture, household utilities, paintings etc. Assets that are in fact capital investments, e.g. expensive paintings and antiques, are not household goods.

**28. Are there circumstances under which partners in an informal relationship can be regarded as joint owners, even if the title belongs to one partner only?**

As mentioned in the answer to Question 26, ownership is obtained regardless of judicial registration of title. Therefore, partners to an informal relationship can be regarded as joint owners even if the registered title belongs to one partner only.

Even though formal ownership (registered title) is not decisive, a good faith purchaser of land may rely on the registration. To obtain protection from a good faith purchaser, the real co-owner must have the property registered by the registrar for judicial registration of title pursuant to the Norwegian Land Registration Act.<sup>31</sup> This also holds true in cases where joint ownership is based on indirect contributions.<sup>32</sup>

Creditors, on the other hand, must accept real ownership as a rule.<sup>33</sup> This also applies in cases where joint ownership is based on indirect contributions.<sup>34</sup> However, when property is transferred from one partner to the other by contract, registration is necessary. To be protected from the creditors of the old owner, the new owner must

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<sup>30</sup> P. LØDRUP and T. SVERDRUP, *Familieretten*, 2011, at p. 342-343.

<sup>31</sup> The Land Registration Act 1935, sections 20, 21 and 27.

<sup>32</sup> Rt. 1996 s. 918, see T. SVERDRUP, *Stiftelse av sameie i ekteskap og ugift samliv*, Universitetsforlaget, Oslo, 1997, at p. 36-37.

<sup>33</sup> K. LILLEHOLT, *Allmenn formuerett. Fleire rettar til same formuesgode*, Universitetsforlaget, Oslo, 2012, at p. 277 and T. SVERDRUP, *Stiftelse av sameie i ekteskap og ugift samliv*, Universitetsforlaget, Oslo, 1997, at p. 34.

<sup>34</sup> See K. LILLEHOLT, *Allmenn formuerett. Fleire rettar til same formuesgode*, Universitetsforlaget, Oslo, 2012, at p. 276 and T. SVERDRUP, *Stiftelse av sameie i ekteskap og ugift samliv*, Universitetsforlaget, Oslo, 1997, at p. 34-36.

see to it that the property is registered by the registrar for judicial registration of title pursuant to the Norwegian Land Registration Act.<sup>35</sup>

**29. How is the ownership of assets proved as between partners in an informal relationship? Are there rebuttable presumptions?**

The documentation that is required depends on the basis for the claim of ownership. If the alleged basis is an agreement between the parties, the registered title, together with other factors, may serve as proof of an agreement, but the title in itself is not sufficient proof of ownership.<sup>36</sup>

If there is no express agreement and both cohabitants have made a direct financial contribution to the cost of an item of property for common personal use, the presumption is that the cohabitants have made a tacit agreement of co-ownership even if only one of the cohabitants is the buyer. This presumption is rebuttable – specific circumstances might suggest that the financial contribution was a gift or a loan. As mentioned under Question 26, not only direct, but also indirect contributions are acknowledged. No specific presumption applies in this assessment.

Assuming the conclusion is co-ownership, the rebuttable presumption is that the co-owners own equal parts unless circumstances justify a different fraction of ownership, the Norwegian Co-ownership Act S. 2.

**30. How is the ownership of assets proved as regards third parties? Are there rebuttable presumptions?**

Ownership is proved in the same way as regards third parties. However, cohabitants might sometimes have a common interest in concealing the real ownership in these cases, and less credence will therefore be accorded to documentation and testimonies in such cases.

A few rebuttable presumptions exist in relation to creditors in the Norwegian Act relating to enforcement of claims 1992, S. 7-13 and 7-14. According to S. 7-13 third paragraph, a creditor may seize half of the family home if the debtor is a cohabitant (or spouse) and the home is acquired during the relationship, provided no other ownership is proved. This presumption is easily rebutted, and the Supreme Court has stated that the presumption will only have significance in the initial phases when the enforcement officer seeks seizure of the property, and not when the cases are brought to court, Rt. 1999 s. 901(spouses) and Rt. 2004 s. 256 (cohabitants).<sup>37</sup>

**31. Under what circumstances, if any, can partners in an informal relationship become jointly liable for debts?**

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<sup>35</sup> The Norwegian Land Registration Act 1935, S. 20 and 23.

<sup>36</sup> Rt. 1980, p. 1403.

<sup>37</sup> K. LILLEHOLT, *Allmenn formuerett. Fleire rettar til same formuesgode*, Universitetsforlaget, Oslo, 2012, at p. 278.

If both partners have contracted the debt, they are normally jointly liable, which means that the debt can be enforced in full against either of the partners.

**32. On which assets can creditors recover joint debts?**

The creditor can recover joint debts (solidary obligations) from all assets that belong to either of the two debtor cohabitants.

**33. Are there specific rules governing the administration of assets jointly owned by the partners in an informal relationship? If there are no specific rules, briefly outline the generally applicable rules.**

There are no specific rules governing the administration of assets jointly owned by the partners to an informal relationship. The generally applicable rules regarding items of property – both real property and movables – are found in the Norwegian Act on Co-ownership. Each co-owner may, for example, freely dispose of his or her undivided share in the property pursuant to the Norwegian Act on Co-ownership, S. 10, unless otherwise agreed. Special circumstances might lead to a more restricted right to dispose of an item, according to the Norwegian Act on Co-ownership, S. 1. This could be the case when the property in question is owned by two partners to an informal relationship.

**D. Separation**

**34. When partners in an informal relationship separate does the law grant maintenance to a former partner? If so, what are the requirements?**

The law does not grant maintenance to a former partner when partners to an informal relationship separate.

**35. What relevance, if any, upon the amount of maintenance is given to the following factors/circumstances:**

- a. **The creditor's needs and the debtor's ability to pay maintenance?**
- b. **The creditor's contributions during the relationship (such as the raising of children)?**
- c. **The standard of living during the relationship?**
- d. **Other factors/circumstances (such as giving up his/her career)?**

See the answer to Question 34, as no maintenance is granted, this question is not relevant.

**36. What modes of calculation (e.g. percentages, guidelines), if any, apply to the determination of the amount of maintenance?**

Not applicable, see answer to Question 34.

**37. Where the law provides for maintenance, to what extent, if at all, is it limited to a specific period of time?**

Not applicable, see answer to Question 34.

**38. What relevance, if any, do changed circumstances have on the right to continued maintenance or the amount due?**

Not applicable, see answer to Question 34.

**39. Is the maintenance claim extinguished upon the claimant entering:**  
**a. Into a formal relationship with another person?**  
**b. Into an informal relationship with another person?**

Not applicable, see answer to Question 34.

**40. How does the creditor's maintenance claim rank in relation to:**  
**a. The debtor's current spouse, registered partner, or partner in an informal relationship?**  
**b. The debtor's previous spouse, registered partner, or partner in an informal relationship?**  
**c. The debtor's children?**  
**d. The debtor's other relatives?**

Not applicable, see answer to Question 34.

**41. When partners in an informal relationship separate, are specific rules applicable to the determination of the ownership of the partners' assets? If there are no specific rules, which general rules are applicable?**

Partners to an informal relationship own their property separately during the relationship, and no specific rules are applicable to the determination of ownership of the partners' assets when they separate. As mentioned in Question 26, co-ownership can be established on the basis of indirect contributions, for example in the form of childcare or the meeting of family expenses.

**42. When partners in an informal relationship separate, are specific rules applicable subjecting all or certain property (e.g. the home or household goods) to property division? If there are no specific rules, which general rules are applicable?**

There is no statute that specifically regulates cohabitation in Norway. When partners to an informal relationship separate, a settlement along property lines normally takes place. Only two specific rules exist. First, non-statutory rules to avert unjust enrichment have developed through Supreme Court practice. Secondly, a limited opportunity exists for a cohabitant to purchase what was previously the family home and household goods at market value pursuant to the Norwegian Household Community Act.

If neither of these specific rules apply in a particular case, the partners retain their property and debts on a relationship breakdown. If an item of property is co-owned by the partner, each spouse retains his or her part of the said item.

**43. Do the partners have preferential rights regarding their home and/or the household goods? If so, what factors are taken into account when granting these rights (e.g. the formal ownership of the property, the duration of the relationship, the needs of each partner, the care of children)?**

The Norwegian Household Community Act applies to two or more unmarried adults who have lived together in a household, and includes cohabitants as well as siblings, students and others who live together. When 'strong reasons' so indicate, a partner to an informal relationship may purchase what was previously the common residence and household goods at market value upon the termination of the household, pursuant to the Norwegian Household Community Act, S. 3. The needs of the children are given special weight in this assessment. On the same strict conditions a cohabitant may obtain the right to enter into a tenancy agreement even if the contract is established in the name of the other cohabitant. As the cohabitant is obliged to pay market price and the conditions are strict, the Norwegian Household Community Act is not applied very often.

**44. How are the joint debts of the partners settled?**

As mentioned, no statute specifically regulates the financial settlement upon a relationship breakdown. Each partner retains his or her debts upon separation. If they are jointly liable, debt recovery can be enforced in full against either of the partners after the separation.

**45. What date is decisive for the determination and the valuation of:**  
**a. The assets?**

As each partner retains whatever he or she owns upon separation, there is normally no need for any decisive date for the determination and the valuation of assets. However, when there are 'strong reasons' for doing so, a cohabitant may obtain ownership of the former family home and household goods owned wholly or partly by the other cohabitant. In these cases the market value of the items of property must be paid to the owner, see the Norwegian Household Community Act, S. 3. If the cohabitants do not agree on the value of the items of property, the value must be determined by means of a probate valuation. The valuation in a public administration of the estate is to be based on the value at the time of factual allocation of the items of property, and in a private administration of the estate on the value at the time it was decided – either by the court or by an agreement – who should take over the item of property.<sup>38</sup>

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<sup>38</sup> See the Norwegian Household Community Act, S. 3 last paragraph and the Norwegian Marriage Act, S. 69 first paragraph and second paragraph second sentence and Rt. 2006 p. 627.



**b. The debts?**

The partners retain their debts upon a relationship breakdown and therefore there is no need for a date for the determination and the valuation of debts.

**46. On what grounds, if any, and to what extent may a partner upon separation claim compensation upon the basis of contributions made or disadvantages suffered during the relationship?**

A partner may claim compensation or restitution upon the basis of contributions made during the relationship. These non-statutory rules developed through Supreme Court practice in the 1980s.<sup>39</sup> The cohabitant must have provided the other party with a 'significant financial benefit' in order to receive any compensation. In addition, the granting of compensation must be 'reasonable'. Compensation to avert unjust enrichment is granted only 'in exceptional cases', see Rt. 2011 p. 1168.

**E. Death**

**47. Does the surviving partner have rights of inheritance in the case of intestate succession? If yes, how does this right compare to that of a surviving spouse or a registered partner, in a marriage or registered partnership?**

Surviving cohabitants have rights of inheritance in the case of intestate succession as long as the cohabitants have, have had or expect a child together pursuant to the Norwegian Inheritance Act, S. 28(b). The surviving cohabitant inherits four times the National Insurance basic amount on the date of death – a total of approximately NOK 353,000<sup>40</sup> or 40,000 Euros. This inheritance right takes precedence over the inheritance rights of the lineal descendants, but can be restricted by a will, as long as the cohabitant is informed of the will before the testator's death.<sup>41</sup>

In the Norwegian Inheritance Act, cohabitation is defined as two people over the age of 18 living together in a marriage-like relationship as long as they are not married, registered partners or cohabiting with others.<sup>42</sup> Same-sex couples are included in this definition. The two people must permanently reside together, but it is expressly stated that shorter periods of separation due to education, work, illness and the like are no disqualification. People who are so closely related that they cannot marry are excluded from the definition of cohabitation.<sup>43</sup>

In comparison, the surviving spouse is entitled to one quarter of the estate if the deceased had children and, unlike the right of the cohabitant, this inheritance right

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<sup>39</sup> See Rt. 1984 p. 497, Rt. 2000 p. 1089, Rt. 2011 p. 1168 and Rt. 2011 p. 1176.

<sup>40</sup> The National Insurance basic amount was NOK 88,370 on 1 May 2014.

<sup>41</sup> The Norwegian Inheritance Act, S. 28(b).

<sup>42</sup> Norwegian Inheritance Act, Chapter III A and J. ASLAND and P. HAMBRO, 'New Developments and Expansion of Relationships Covered by Norwegian Law', in: B. ATKIN (ed.), *The International Survey of Family Law*, Jordan Publishing Limited, Bristol, 2009, pp. 378-384.

<sup>43</sup> The Norwegian Inheritance Act, S. 28(a).

can only partly be restricted by a will.<sup>44</sup>

The surviving cohabitant may elect to keep part of the deceased's estate undivided instead of making use of the inheritance right (see Question 48).

**48. Does the surviving partner have any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of intestate succession?**

Surviving cohabitants have a right of undivided possession of part of the estate as long as the cohabitants have, have had or expect a child together, pursuant to the Norwegian Inheritance Act, S. 28(c). This right of undivided possession applies to the family home and household goods, to holiday homes and vehicles as long as these items are for joint use.<sup>45</sup> This right can be restricted only by a will, of which the cohabitant is informed before the testator's death.<sup>46</sup>

A surviving cohabitant may claim compensation on the basis of principles of unjust enrichment and restitution. These non-statutory rules developed through Supreme Court practice in the 1980s.<sup>47</sup> The cohabitant must have provided the other party with a 'significant financial benefit' in order to receive any compensation. In addition, the granting of compensation must be 'reasonable'. Compensation to avert unjust enrichment is granted only 'in exceptional cases'.

When 'special reasons' so indicate, a surviving partner to an informal relationship (and other people who live together in a household) may purchase what was previously the common residence and household goods at market value, pursuant to the Norwegian Household Community Act, S. 2.

**49. Are there specific rules dealing with the home and/or household goods?**

A surviving partner may purchase the family home and household goods at market value if 'special reasons' so indicate, pursuant to the Norwegian Household Community Act, S. 2.

The surviving cohabitant's right of undivided possession of the estate applies to the family home and household goods (as well as to holiday homes and vehicles for joint use).<sup>48</sup>

**50. Can a partner dispose of property by will in favour of the surviving partner:  
a. In general?**

Yes, in general, a partner can dispose of property by will in favour of the surviving

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<sup>44</sup> The Norwegian Inheritance Act, S. 28(b) second paragraph.

<sup>45</sup> The Norwegian Inheritance Act, S. 28(c).

<sup>46</sup> The Norwegian Inheritance Act, S. 28(c) third paragraph.

<sup>47</sup> See Rt. 1984 p. 497, Rt. 2000 p. 1089, Rt. 2011 p. 1168 and Rt. 2011 p. 1176.

<sup>48</sup> The Norwegian Inheritance Act, S. 28(c).

partner, as freedom of testation is the general rule; see Norwegian Inheritance Act S. 48.

**b. If the testator is married to or is the registered partner of another person?**

If the testator is married to or is the registered partner of another person, the freedom of testation is limited, as the spouse/registered partner has a right to a so-called 'minimum inheritance'. This minimum inheritance normally amounts to about 40,000 Euros and cannot be restricted by a will.<sup>49</sup>

**c. If the testator has children?**

If the testator has children, the freedom of testation is also limited. As a rule, two-thirds of the partner's estate passes as compulsory inheritance to the children of the testator; this forced share must in no case exceed NOK 1 million to each child, pursuant to the Norwegian Inheritance Act, S. 29. However, cohabitants<sup>50</sup> who do not have children together have an expanded right of testation as long as they have lived together for at least five years prior to death, see the Norwegian Inheritance Act, S. 28(b) first paragraph second sentence. These cohabitants may dispose of their property by will in favour of the surviving cohabitant up to a value of four times the National Insurance basic amount, without taking into consideration their respective lineal descendants. (If the cohabitants have children together, no such will is needed, as they inherit the same amount by intestate succession, see Question 47.)

**51. Can partners make a joint will disposing of property in favour of the surviving partner:**

**a. In general?**

Yes, partners – as others – can make a joint will disposing of property in favour of the surviving partner pursuant to the Norwegian Inheritance Act, S. 49 third paragraph.

**b. If either testator is married to or is the registered partner of another person?**

If either testator is married to or is the registered partner of another person, partners can still make a joint will, but the testator has to respect the minimum inheritance of the spouse/registered partner, see the Norwegian Inheritance Act 1972, S. 6 and 7.

**c. If either testator has children?**

If the testator has children, the partners can still make a joint will, but the freedom of testation is limited as children have a right to a forced share. However, cohabitants without common children have an expanded right of testation, see the Norwegian

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<sup>49</sup> The Norwegian Inheritance Act, S. 6 and 7. The minimum inheritance for spouses is four times the National Insurance basic amount, i.e. about 40,000 Euros, if the testator has lineal descendants and six times the National Insurance basic amount, i.e. about 60,000 Euros, if the testator does not have lineal descendants.

<sup>50</sup> Cohabitation is defined in the Norwegian Inheritance Act, S. 28(a), see Question 47.

Inheritance Act, S. 28(b) first paragraph second sentence and the answer to Question 50.

**52. Can partners make other dispositions of property upon death (e.g. agreements as to succession or gifts upon death) in favour of the surviving partner:**

**a. In general?**

Yes, partners can make other dispositions of property upon death in favour of the surviving partner – both agreements as to succession and gifts upon death. If these dispositions are not intended to have any effect for the testator during his or her own lifetime, they are regarded as testamentary dispositions and subject to the same mandatory provisions as wills in the Norwegian Inheritance Act.

**b. If either partner is married to or is the registered partner of another person?**

If these dispositions are not intended to have any effect for the testator during his or her own lifetime, they are regarded as testamentary dispositions and must comply with the formal requirements of wills. Moreover, the testator has to respect the minimum inheritance of the spouse/registered partner; see the Norwegian Inheritance Act, S. 6 and 7.

**c. If either partner has children?**

If the dispositions are regarded as testamentary dispositions they must comply with the formal requirements of wills. Moreover, the freedom of testation is limited as the testator's children have a right to a forced share of the estate.

**53. Is the surviving partner entitled to a reserved share<sup>51</sup> or to any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of a disposition of property upon death (e.g. by will, joint will, or inheritance agreement) in favour of another person?**

The surviving cohabitant's inheritance right and right of undivided possession mentioned in Questions 48 and 49 can be restricted by a will as long as the surviving partner is informed of the will before the testator's death. A cohabitant's right to purchase what was previously the common residence and household goods at market value pursuant to the Norwegian Household Community Act, S. 2, cannot be restricted by a will or an inheritance agreement.

**54. Are there any statistics or estimations on how often a relationship is terminated by the death of one of the partners?**

Among couples with children that were cohabiting in 2005, about 7 cohabitants per 1,000 cohabitants had experienced termination of the relationship through death

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<sup>51</sup> See Regulation no. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession [2012] OJ L 201/107.

during the eight-year period of 2005–2013. The corresponding number among cohabitants without children was 40 per 1,000 cohabitants.<sup>52</sup>

**55. Are there any statistics or estimations on how common it is that partners in an informal relationship make a will in favour of the other partner?**

There are no statistics or estimations on how common it is that partners to an informal relationship make a will in favour of the other partner.

**56. Are there any statistics or estimations on how common it is that a partner in an informal relationship is the beneficiary to the other partner's life insurance?**

There are no statistics or estimations on how common it is that a partner to an informal relationship is the beneficiary of the other partner's life insurance.

**F. Agreements**

**57. Are there specific rules concerning agreements between partners in an informal relationship? Where relevant, please indicate these specific rules. If not, which general rules apply?**

There are no specific rules concerning agreements between partners to an informal relationship. However, one provision could be mentioned: the Norwegian Household Community Act, S. 4 applies to two or more unmarried adults sharing a household (cohabitants, sisters, students etc.), and states that when considering whether a member of a household is to obtain rights according to the Act, agreements between the parties made prior to the termination must be taken into account. In other words, they are not binding. As a general rule partners to an informal relationship are free to enter into agreements.

**58. Are partners in an informal relationship permitted to agree on the following issues:**

**a. The division of tasks as between the partners?**

Partners to an informal relationship are permitted to agree on the division of tasks as between the partners. The fact that they agreed on the division of tasks might have legal significance when assessing co-ownership based on indirect contributions.

Another matter to be borne in mind is that agreements on the division of tasks might not be legally enforceable as there is no intention to be legally bound.

**b. The contributions to the costs and expenses of the household?**

Yes, partners are permitted to agree on the contributions to costs and expenses of the

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<sup>52</sup> Register-based statistics from Statistics Norway processed by E. GOPLEN, *Barn i det moderne samboerskap - en bindende eller splittende faktor?*, Master's thesis, University of Oslo, 2014, table 3 at p. 32.

household. According to the Norwegian Supreme Court, the content of such an agreement may affect how the economic benefit is to be calculated when granting compensation on the basis of principles of unjust enrichment.<sup>53</sup>

**c. Their property relationship?**

Yes, partners to an informal relationship are permitted to agree on their property relationship. Such contracts will in practice determine the financial settlements upon termination of the relationship.

**d. Maintenance?**

Yes, partners to an informal relationship are permitted to agree on maintenance.

**e. The duration of the agreement?**

Yes, partners to an informal relationship are permitted to agree on the duration of the agreement.

**59. Are partners in an informal relationship permitted to agree on the legal consequences of their separation?**

As a rule, partners to an informal relationship are permitted to agree on the legal consequences of their separation regarding both property and other financial matters.

If an agreement regulates the financial settlement upon death, the agreement should be set out in the form of a will in order to be protected against the heirs of the deceased partner.

**60. Are the agreements binding:**

**a. Between the partners?**

Yes, as a rule, the agreements are binding between the partners.

An agreement may be wholly or partly annulled if it will affect one of the parties unfairly pursuant to the Norwegian Act relating to Conclusion of Agreements 1918, S. 36. Instead of annulling the agreement, the court may decide to modify the agreement. In practice this provision has been interpreted restrictively, and is rarely used; see Rt. 2011 p. 1168.

**b. In relation to third parties?**

As a rule, agreements are binding in relation to third parties as well. However, the owner of property needs to be protected from a good faith purchaser, and

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<sup>53</sup> Rt. 2011 p. 1176.

agreements which transfer property from one partner to the other need protection against seizure from the creditors of the former owner. (To obtain such protection, real property must be registered by the registrar for judicial registration of title pursuant to the Norwegian Land Registration Act.)

**61. If agreements are not binding, what effect, if any, do they have?**

As a rule, non-binding agreements will have no effect. Depending on the circumstances, compensation may be granted.

**62. If specific legislative provisions regulate informal relationships, are the partners permitted to opt in or to opt out of this specific regulation?**

The Norwegian Household Community Act provides a limited opportunity for a household member to purchase what was previously the common residence and household goods at market value upon the termination of the relationship when 'strong reasons' so indicate. The parties are not permitted to opt out of this Act before or during the relationship – agreements between the parties made prior to the termination are to be taken into account pursuant to S. 4. The partners may agree to opt out of this regulation when the relationship has terminated.

The inheritance right of the surviving cohabitant and the right to undivided possession of the estate can be restricted by a will of which the cohabitant is informed before the testator's death.<sup>54</sup>

**63. When can the agreement be made (before, during, or after the relationship)?**

In general, agreements can be made before, during, and after the relationship. As regards the Norwegian Household Community Act, agreements to opt out can only be made after the relationship, see also answer to Question 62.

**64. What formal requirements, if any, govern the validity of agreements:**

**a. As between the partners?**

In general, no formal requirements govern the validity of agreements as between the partners. Verbal agreements are valid as well; however, such agreements can be difficult to prove.

**b. In relation to a third party?**

As a rule, agreements are valid in relation to a third party without any formal requirements. However, the owner of real property needs to be protected from a good faith purchaser, and agreements which transfer real property from one partner to the other need protection against seizure from the creditors of the former owner. To obtain such protection, real property must be registered by the registrar for

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<sup>54</sup> See Questions 47 and 48.

judicial registration of title pursuant to the Norwegian Land Registration Act.

If an agreement regulates the financial settlement upon death, the agreement should be set out in the form of a will in order to be protected against the heirs of the deceased partner.

**65. Is independent legal advice required?**

No, independent legal advice is not required. As mentioned in the response to Question 60 above, an agreement may be wholly or partly annulled if it will affect one of the parties unfairly pursuant to the Norwegian Act relating to Conclusion of Agreements, S. 36, and in this connection, it may be significant whether the parties have received legal advice.

**66. Are there any statistics or estimations on the frequency of agreements made between partners in an informal relationship?**

In a study in 1997 about 20% of cohabiting couples had entered into written agreements with respect to the legal consequences regarding property and other financial matters upon termination. In the age group 20–34 years the percentage was 13, while it rose to 38% among cohabitants in the oldest group, i.e. 50–79 years.<sup>55</sup> In a more recent survey from 2010, the figure was 15% for all age groups.<sup>56</sup>

**67. Are there any statistics or estimations regarding the content of agreements made between partners in an informal relationship?**

There are no recent statistics regarding the content of agreements made between partners to an informal relationship.

**G. Disputes**

**68. Which authority is competent to decide disputes between partners in an informal relationship?**

The ordinary courts of justice are competent to decide disputes between partners to an informal relationship – with the district courts as the first instance courts. Family cases solely concerned with financial settlement upon separation are one of the cases that can be heard by the conciliation board, which helps the parties to achieve a simple resolution of the case through conciliation or judgment pursuant to the Norwegian Dispute Act chapter 6.

**69. Is that the same authority as for spousal disputes?**

Yes, it is the same authority as for spousal disputes.

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<sup>55</sup> NOU 1999: 25 p. 71 (Omnibus Survey 1997, Statistics Norway).

<sup>56</sup> Conducted by Opinion for HELP Forsikring.



**70. Can the competent authority scrutinise an agreement made by the partners in an informal relationship? If yes, what is the scope of the scrutiny?**

No, the competent authority cannot scrutinise an agreement made by the partners to an informal relationship.

**71. Can the competent authority override or modify the agreement on account of fairness towards a partner, the rights of a third party, or on any other ground (e.g. a change of circumstances)?**

All agreements – not only agreements between cohabitants – may be wholly or partly annulled pursuant to the Norwegian Act relating to Conclusion of Agreements, S. 36 if they are deemed to affect one of the parties unfairly. Instead of annulling the agreement, the court may decide to modify the agreement.

**72. What alternative dispute-solving mechanisms (e.g. mediation or counselling), if any, are offered or required with regard to disputes arising out of informal relationships?**

Out-of-court mediation is offered, but not required, in civil disputes pursuant to the Norwegian Dispute Act chapter 7.

Mediation also takes place in the counselling boards and before the ordinary courts pursuant to the Norwegian Dispute Act chapters 6 and 8. The court may decide that so-called ‘judicial mediation’ is to take place. In making its ruling, the court must have regard to the views of the parties and the likelihood of reaching a settlement; see the Act S. 8-3.

**73. What are the procedural effects of an agreement on ADR between partners in an informal relationship? Can any partner seize the competent authority in breach of the ADR clause?**

The partners may, in respect of a legal dispute, agree to out-of-court mediation pursuant to the Norwegian Dispute Act. The agreement must be in writing and must specify that the provisions on out-of-court mediation in the Norwegian Dispute Act are to apply; see the Norwegian Dispute Act S. 7-1. The parties may at any time demand that the out-of-court mediation is to be adjourned. A partner may apply to the courts where there has been a breach of the ADR clause.

**74. Are there any statistics or estimations on how common it is that partners in an informal relationship include an ADR clause in their agreement?**

No statistics exist on how common it is that partners in an informal relationship include an ADR clause in their agreement. The general impression is that such clauses seldom occur.