

NATIONAL REPORT: RUSSIA

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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.**

Russian law currently regulates only one kind of formal relationship – a different-sex marriage. Article 1(2) of the Russian Family Code states that the recognition of only a formally registered marriage is one of the leading principles in Russian Family Law.¹ Marriage is regulated by parts II and III of the Russian Family Code of the Russian Federation.² Chapter 3 governs the formation of marriage; Chapter 4 governs the termination of marriage; Chapter 5 governs the annulment of marriage; Chapter 6 governs the personal rights and duties of spouses; Chapter 7 governs the statutory regime of matrimonial property; Chapter 8 governs the contractual regime of matrimonial property; and Chapter 9 governs the liability of spouses.

- 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?**

At present, Russian law contains no specific provisions governing informal relationships.

- 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**

¹ Н.С. РУМЯНЦЕВА, 'Имущественные права супругов в гражданском браке', *Семейное и жилищное право*, 2009, at p. 22.

² Further referred to as the Russian Family Code. *Семейный кодекс Российской Федерации*, adopted on 8 December 1995, in force since 1 March 1996. *Собрание законодательства Российской Федерации*, 1996, No. 1, item 15. For an English translation, see W. BUTLER and J. HENDERSON, *Russian Legal Texts. The Foundation of a Rule-of-Law State and a Market Economy*, Simmons and Hill Publishing Ltd, The Hague, 1998, at p. 517- 593.

The Russian Supreme Court has consistently denied the possibility of applying provisions of the Russian Family Code to informal relationships by way of analogy.³ Russian law considers informal partners to be strangers to one another.

Property relationships between informal partners are governed by the general rules of civil law and not by the rules of family law. There are two situations in which the property of informal partners may be governed by the rules of the Civil Code of the Russian Federation⁴ governing joint ownership (Art. 244-255):

- when informal partners jointly acquire property in the names of both of them;
- when informal partners enter into an agreement stating that all or part of any property acquired by them during their relationship will become their joint property.

Informal partners may enter into an agreement to regulate their relationship, even though Russian law does not provide for any specific agreements for regulating such relationships. As a general principle of Russian civil law is that any agreement which does not violate the law is valid, an agreement between informal partners can also be valid. In the absence of any specific regulation, the legal nature, form and other requirements of such agreements are subject to discussion. Some authors consider a cohabitation agreement to be an agreement *sui generis*, while others consider it to be a kind of joint entrepreneurship agreement.⁵

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

There is no general legal definition of informal relationships either in statutory law or in the case law.

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

a. When does the relevant relationship begin?

The beginning of the relationship is never relevant.

b. When does the relevant relationship end?

The rules of inheritance law require cohabitation for at least one year. If cohabitation has lasted for at least one year and the surviving partner is unable to work and was

³ Постановление Пленума Верховного Суда РСФСР от 21 февраля 1973 года № 3 , Бюллетень Верховного Суда РСФСР, 1973, № 5; Постановление Пленума Верховного Суда РФ от 25 апреля 1995 года № 6, Бюллетень Верховного Суда РФ. 1995, № 7.

⁴ Further referred to as the Russian Civil Code. *Гражданской кодекс Российской Федерации*. Adopted on 21 October 1994, in force since 1 January 1995. *Собрание законодательства Российской Федерации* 1994, No. 32, item 3301. For an English translation, see: 21 *Review of Central and Eastern European Law*, 1995, No. 3/4, at p. 245-430.

⁵ С .Ю. ФИЛИПОВА, 'Гражданско-правовые средства достижения цели построения семьи путем фактических брачных отношений', *Семейное и жилищное право*, 2010, at p. 7.

maintained by the deceased partner, the surviving partner has a right of inheritance in the event of intestate succession (Art. 1148(2) Russian Civil Code).

The duration of the relationship is also relevant for a court decision on granting an informal partner the status of a member of the family of the other partner if the latter was the sole owner or the social tenant of the family home (see the answer to the Question 22).

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

Article 38 of the Constitution of the Russian Federation states that motherhood, childhood and the family are protected by the state. Neither the Russian Constitution nor the Russian Family Code contains a legal definition of the family. That has prompted some authors to conclude that a family made up of informal partners should be regarded as being protected by the state and that the legislation should be changed in order to ensure better protection for informal partners and their families.⁶

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 have so far not had any direct influence on the legal position of informal spouses. However, some authors note that by failing to protect informal relationships, Russia is violating its obligations under Art. 8 ECHR.⁷ In 2004, in the case of *Prokopovich v. Russia*, the ECtHR ruled against Russia for violating Art. 8 ECHR. In this case the European Court decided that the informal relationship of Ms. Prokopovich and her deceased partner fell under the protection of Art. 8 ECHR and that Ms. Prokopovich was therefore entitled to succeed him in the tenancy.⁸

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.

The Second Russian Family Code of 1926⁹ equated the legal consequences of a long-standing *de facto* cohabitation with those of a formal marriage.¹⁰ The registration of

⁶ А.С. КОВАЛЕВА, 'Гражданский брак как дестабилизатор семьи', *Власть и управление на Востоке России*, 2009, at p. 145.

⁷ И.А. КОСАРЕВА, 'Международное, зарубежное и российское право о статусе лиц, состоящих в фактических супружеских отношениях', *Семейное и жилищное право*, 2010, at p. 3.

⁸ ECtHR, *Prokopovich v. Russia*, No. 58255/00, 18.11.04, at § 29.

⁹ Кодекс законов о браке семье и опеке (Code on Marriage, Family and Guardianship) of 19 November 1926.

marriage was preserved, but was no longer treated as a constitutive element of the formation of marriage. Consent alone was sufficient to create a valid marriage. The reasons for this far-reaching innovation were manifold. One rather utopian motive behind this deformalisation was the urge to build a Communist future, where formal marriage was supposed to 'die out'. A more down-to-earth incentive to equate registered and unregistered marriage was the aim of protecting 'proletarian' *de facto* wives from 'exploitation' by their usually more economically powerful *de facto* husbands.¹¹

In 1944, cohabitation lost its legal standing and unmarried couples were summoned to formalise their relationships. From then onwards, and until *perestroika*, stable non-marital cohabitation all but disappeared in the Soviet Union.

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

No. There have been several attempts by members of the academic community to place legislation governing informal relationships on the agenda of the Duma (the Lower Chamber of the Russian Parliament), but these have so far been unsuccessful.

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.

¹⁰ The Code, as such, did not treat the two institutions as being equal; this result was attained through the case law.

¹¹ Д. ГЕНКИН, И. НОВИЦКИЙ and Н. РАБИНОВИЧ, *История советского гражданского 1917-1947*, Юридическая литература, Moscow, 1949, at p. 443.

Year	Amount of Marriages	Marriages per 1000 of the population
1950	1,222,971	12.0
1960	1,499,581	12.5
1970	1,319,227	10.1
1980	1,464,579	10.6
1990	1,319,928	8.9
1995	1,075,219	7.3
2000	897,327	6.2
2001	1,001,589	6.9
2002	1,019,762	7.1
2003	1,091,778	7.5
2004	979,667	6.8
2005	1,066,366	7.4
2006	1,113,562	7.8
2007	1,262,500	8.8
2008	1,179,007	8.3
2009	1,199,446	8.4
2010	1,215,066	8.5
2011	1,316,011	9.2
2012	1,213,598	8.5
2013	1,225,501	8.5

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

The most recent¹² reliable data are provided by the 2002 population census. As part of the census, respondents were asked whether their marriage was registered. According to the response,¹³ 11% of marriages were not registered.¹⁴ This response does not, however, indicate what respondents consider to be a 'non-registered marriage'. Another representative survey provides more specific data on various types of informal unions. In a 2005 nationwide ('All-Russia') survey, with an extensive selection in Moscow,¹⁵ 9% of all the respondents indicated that they 'maintain a stable close intimate relationship with a man/woman without being married to him/her'. According to this survey, only half of these couples live under

¹² The results of the most recent census of 2010 are unfortunately not yet available.

¹³ The data have been obtained from self-reporting rather than being official data from marriage registers and the like.

¹⁴ Calculated by Е. Вовк on the basis of the data from the 2002 census. Е. ВОВК, 'Незарегистрированные интимные союзы: "разновидности" брака или "альтернативы" ему? (Часть 1)', *Демоскоп Weekly*, 229-2230, 1 - 22 January 2006, available at: bd.fom.ru/report/cat/journ_socrea/number_1_05/gur050103 and perepis2002.ru/index.html?id=7.

¹⁵ Е. ВОВК, 'Незарегистрированные интимные союзы: "разновидности" брака или "альтернативы" ему? (Часть 1)', *Демоскоп Weekly*, 229-2230, 1 - 22 January 2006, available at: bd.fom.ru/report/cat/journ_socrea/number_1_05/gur050103.

the same roof, while a quarter do not live together, and the rest 'live sometimes together, sometimes apart'.¹⁶

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

- a. Under 25 years of age?
- b. Between 26-40 years of age?
- c. Between 41-50 years of age?
- d. Between 51-65 years of age?
- e. Older?

The general 2002 census provided the following data:¹⁷

		Males			
		Total Population	Total Married	Registered Marriage	Not Registered Marriage
Urban and rural population 16 years old and over, incl. persons under 16 who stated their marital status		54,154,219	33,916,617	30,594,556	3,322,061
At ages, years	Under 16	1,116	953	554	399
	16-17	2,557,374	10,602	4,614	5,988
	18-19	2,632,472	68,884	43,012	25,872
	20-24	5,783,137	1,376,808	1,074,974	301,834
	25-29	5,314,150	3,063,210	2,581,611	481,599
	30-34	4,914,529	3,480,011	3,024,425	455,586
	35-39	5,024,854	3,836,392	3,420,919	415,473
	40-44	6,084,104	4,799,369	4,357,755	441,614
	45-49	5,493,467	4,404,996	4,039,636	365,360
	50-54	4,642,046	3,766,486	3,485,729	280,757
	55-59	2,365,925	1,928,128	1,796,934	131,194
	60-64	3,250,993	2,637,999	2,465,305	172,694
	65-69	2,444,084	1,976,755	1,862,310	114,445
	70 and over	3,585,602	2,551,936	2,424,266	127,670
	Age is not stated		60,366	14,088	12,512

¹⁶ Е. ВОВК, 'Незарегистрированные интимные союзы: 'разновидности' брака или 'альтернативы' ему? (Часть 1)', *Демоскоп Weekly*, 229-2230, 1 - 22 January 2006, available at: bd.fom.ru/report/cat/journ_socrea/number_1_05/gur050103.

¹⁷ Rosstat, available at: www.perepis2002.ru/index.html?id=87.

		Females			
		Total Population	Total Married	Registered Marriage	Not Registered Marriage
Urban and rural population 16 years old and over, incl. persons under 16 who stated their marital status		64,689,355	33,984,049	30,676,598	3,307,451
At ages, years	Under 16	3,010	2,761	942	1,819
	16-17	2,485,198	55,355	25,805	29,550
	18-19	2,544,902	3,13,903	211,557	102,346
	20-24	5,683,267	2,404,700	1,947,336	457,364
	25-29	5,298,826	3,464,715	2,971,937	492,778
	30-34	4,921,845	3,474,022	3,063,712	410,310
	35-39	5,191,530	3,760,813	3,412,349	348,464
	40-44	6,462,366	4,658,090	4,285,046	373,044
	45-49	6,112,425	4,264,139	3,936,847	327,292
	50-54	5,429,152	3,561,693	3,301,843	259,850
	55-59	2,981,474	1,785,260	1,666,453	118,807
	60-64	4,732,069	2,459,482	2,305,622	153,860
	65-69	3,900,492	1,731,827	1,626,005	105,822
	70 and over	8,883,270	2,032,952	1,908,217	124,735
	Age is not stated		59,529	14,337	12,927

Less detailed, but more easily intelligible data are provided by the above-mentioned 2005 survey.¹⁸ According to this survey, half of all relationships in the sample in the 18-24 age group were informal relationships, while the share of informal relationships in the older age groups was gradually diminishing, but was still present.

	Age				
	18-24	25-34	35-44	45-54	>55
Marriages	15%	60%	61%	67%	51%
Informal relationships	15%	15%	17%	6%	2%
Percentage of informal relationships from all relationships	50%	20%	22%	9%	5%

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

According to the results of the 2005 All-Russia survey, 11% of all currently married respondents had cohabited informally with their present spouse before they

¹⁸ Е. ВОВК, 'Незарегистрированные интимные союзы: 'разновидности' брака или 'альтернативы' ему? (Часть 1)', *Демоскоп Weekly*, 229-2230, 1 - 22 January 2006, available at: bd.fom.ru/report/cat/journ_socrea/number_1_05/gur050103.

married.¹⁹ According to a recent survey ('Parents and Children, Men and Women in the Family and in Society', which covers the age range of 18-79), informal partners ultimately married each other in 15% of cases.²⁰

a. Where there is a common child?

No specific data available.

b. Where there is no common child?

No specific data available.

14. How many informal relationships are terminated:

a. Through separation of the partners?

According to the above recent survey ('Parents and Children, Men and Women in the Family and in Society'), partnerships ended through termination in 76% of cases.²¹

b. Through the death of one of the partners?

No data available.

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

The 2005 All-Russia survey provides the following information on the duration of marriages and informal relationships:²²

	Duration of relationships (years)						
	Less than 1	1-3	4-5	6-10	11-15	16-20	More than 20
Marriages	27%	54%	57%	84%	89%	94%	98%
Informal relationships	73%	46%	43%	16%	10%	6%	2%

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.

¹⁹ Е. ВОВК, 'Незарегистрированные интимные союзы: "разновидности" брака или "альтернативы" ему? (Часть 1)', *Демоскоп Weekly*, 229-2230, 1 - 22 January 2006, available at: bd.fom.ru/report/cat/journ_socrea/number_1_05/gur050103.

²⁰ А.В АРТАМОНОВА and Е.С. МИТРОФАНОВА, 'Незарегистрированный союз в России как пробная версия брака', *Демоскоп Weekly*, 625-626, 1 - 25 January 2015, available at: demoscope.ru/weekly/2015/0625/analit03.php.

²¹ А.В АРТАМОНОВА and Е.С. МИТРОФАНОВА, 'Незарегистрированный союз в России как пробная версия брака', *Демоскоп Weekly*, 625-626, 1 - 25 January 2015, available at: demoscope.ru/weekly/2015/0625/analit03.php.

²² Е. ВОВК, 'Смыслы и значения незарегистрированных отношений: разновидности брака или альтернативы ему? (Часть 2)', *Демоскоп Weekly*, 229-2230, 1-22, available at: demoscope.ru/weekly/2006/0229/analit03.php.

The increasing popularity of informal relationships has led to a spectacular increase in the number of children born outside marriage. Between 1989 and 2002 the number of children born out of wedlock doubled and now amounts to around 30% of all births. Almost half of these children are registered by their parents jointly, which suggests that their parents have a stable relationship.²³

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

No data available.

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

a. By one partner only?

No data available.

b. Jointly by the couple?

According to Art. 127(2) Russian Family Code, an unmarried couple cannot jointly adopt a child.

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

No data available.

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

According to the results of the 2005 All-Russia survey, at least 22% of all respondents have been in informal relationships in the past.²⁴

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?

No.

b. Where there are common children in the household?

²³ According to the census of 2002, available at: perepis2002.ru/index.html?id=7.

²⁴ Е. ВОВК, 'Смыслы и значения незарегистрированных отношений: разновидности брака или альтернативы ему? (Часть 2)', *Демоскоп Weekly*, 229-2230, 1 - 22, available at: <http://demoscope.ru/weekly/2006/0229/analit03.php>.

No.

c. Where there are other children in the household?

No.

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

No. There is no general duty under Russian law to contribute to the costs and expenses of the household. Even spouses have no such general duty. Partners are, however, jointly and severally liable for the costs related to the family home, in particular:

- Costs related to the home owned by one of the partners, provided that the other partner is acknowledged as a member of the owner's family under Art. 31 Russian Housing Code. In such cases, the partners are jointly and severally liable for all the costs related to the use of the home (Art. 292(1) Russian Civil Code, Art. 31(3) Russian Housing Code);
- Costs related to a home rented by one of the partners as a social tenant, provided that the other partner is acknowledged as a member of the social tenant's family under Art. 69 Russian Housing Code. In such cases, the partners are jointly and severally liable for all debts arising from the social rental contract (Art. 69(2) Russian Housing Code);
- Costs related to a home rented by one of the partners as a commercial tenant, provided that the partners have entered into an agreement on joint and several liability for all debts arising from the commercial tenancy (Art. 677(4) Russian Civil Code).

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?

The position of an informal partner varies, depending on whether the other partner is the owner or the tenant of the home, and then depending on the type of tenancy.

If the other partner is the owner of the home, the right of the non-owning partner depends on whether he/she is granted the status of being a member of the owner's family²⁵ and thus covered by the regime provided for in Art. 292 Russian Civil Code and Art. 31 Russian Housing Code.²⁶

Under Art. 31(1) Russian Housing Code, the owner's spouse, children and parents, provided that they reside with him/her, are unconditionally regarded as family members. Other relatives and disabled dependants residing with the owner and, under exceptional circumstances, also other persons residing with the owner may be

²⁵ See М.А. ДИМИТРАЕВ, 'Особенности правового положения членов семьи собственника жилого помещения', *Семейное и жилищное право*, 2011, at p. 12-16.

²⁶ Жилищный кодекс РФ (ЖК РФ) от 29.12.2004 N 188-ФЗ. Available at: www.consultant.ru/popular/housing/55_6.html#p565.

recognised as family members. The informal partner of the owner falls into this latter, more problematic category and may be granted the status of a family member of the owner, either in an agreement between the partners or, in the event of a dispute, by a court order. The Russian Supreme Court has stressed that, in the absence of a clear agreement, it is not the factual instalment of the informal partner in the home, but rather the partner-owner's intention to install him or her in the home as a member of his/her family that is decisive for being granted the status of a family member.²⁷ According to the Russian Supreme Court, such intention can be derived from the nature of the relationship between the partners (joint household, mutual support) and this can be proved by all forms of evidence admitted by the Russian Code of Civil Procedure.²⁸

An informal partner who is not granted the status of a family member of the owner enjoys no protection at all. An informal partner who is granted such a status enjoys relatively extensive protection.

An informal partner of the owner who is acknowledged as a member of the owner's family has the same right to occupy the home as the owner, unless stated otherwise in an agreement between the partners (Art. 31(2) Russian Housing Code). If the right of the partner to occupy the home is violated, he/she may seek protection against any person causing this violation, including the owner (Art. 292(3) Russian Civil Code). That means that as long as the relationship lasts, the non-owning partner may remain in the home, even against the will of the partner-owner.

Under Art. 31(4) Russian Housing Code, however, the rights of a member of the owner's family to occupy the home cease to exist once the family relationship ends. According to the Russian Supreme Court,²⁹ proof of the end of a marital relationship is demonstrated by divorce, while the end of an informal relationship can be proven by circumstances such as the partners no longer living together, no longer running a joint household and/or no longer supporting each other. However, as Art. 31(1) Russian Housing Code does not require the running of the same household for a partner to be acknowledged as a member of the owner's family, a decision by partners to divide their household can only constitute proof of the end of their family relationship if this occurs in conjunction with the other circumstances.³⁰ To sum up: unless the agreement between the partners provides otherwise, partners cease to be regarded as family members once they separate and the non-owning partner then

²⁷ Постановление Пленума Верховного Суда РФ от 2 июля 2009 года № 14 ' О некоторых вопросах, возникших в судебной практике при применении Жилищного кодекса Российской Федерации', at p. 11.

²⁸ Постановление Пленума Верховного Суда РФ от 2 июля 2009 года № 14 ' О некоторых вопросах, возникших в судебной практике при применении Жилищного кодекса Российской Федерации', at p. 11.

²⁹ Постановление Пленума Верховного Суда РФ от 2 июля 2009 года № 14 ' О некоторых вопросах, возникших в судебной практике при применении Жилищного кодекса Российской Федерации', at p. 13.

³⁰ Постановление Пленума Верховного Суда РФ от 2 июля 2009 года № 14 ' О некоторых вопросах, возникших в судебной практике при применении Жилищного кодекса Российской Федерации', at p. 13.

loses his/her right to occupy the home owned by the other partner (Art. 35(1) Russian Housing Code). He/she can then be evicted by a court order upon an application to this effect by the partner-owner.

However, Art. 35(1) Russian Housing Code also provides for an exception to this rule, whereby protection is granted to a member of the owner's family if that person has neither any other home nor any entitlement to acquire one, if he/she is unable to provide him/herself with another home due to his/her financial situation (insufficient income or property) or other circumstances (e.g. unemployment, disability, study or the need to care for young children).³¹ A non-owning partner who falls within this category can request the court to grant him or her a right of temporary occupation of the home owned by the other (ex)-partner. The court will then determine the permitted duration of such occupation by taking account of all circumstances of the case and the principles of reasonableness and fairness.³²

If the other partner is a tenant, the rights of the non-tenant partner depend on whether the tenancy is a commercial tenancy or a social tenancy.

If the other partner is a social tenant (i.e. he/she rents a home belonging to the state or municipal housing fund and that is designated for social use), the rights of the non-tenant partner depend on whether he/she is granted the status of a member of the tenant's family and, therefore, is covered by the regime provided for in Art. 69-71 of the Russian Housing Code.

Under Art. 69(1) Russian Housing Code, the tenant's spouse, children and parents residing with him/her are unconditionally regarded as family members. Other relatives and disabled dependants residing with the tenant are regarded as family members if they live in the home as family members of the tenant and run a joint household with the tenant. Under exceptional circumstances, other persons residing with the tenant may also be acknowledged as family members. The informal partner of the tenant again falls within this last, more problematic category and may be granted the status of a family member of the tenant only if the following conditions (as stated in Art. 70 Russian Housing Code) are met:

- The partners live together;
- The partners run a joint household. As this rule is designated not just for informal partners but for any persons, the law does not require affective or marriage-like relationships. However, the case law does take account of the nature of personal relationships³³ and an informal partner may therefore have a greater possibility of being recognised as a family member than, for instance, a nanny;

³¹ Постановление Пленума Верховного Суда РФ от 2 июля 2009 года № 14 ' О некоторых вопросах, возникших в судебной практике при применении Жилищного кодекса Российской Федерации', at p. 15 (b).

³² Постановление Пленума Верховного Суда РФ от 2 июля 2009 года № 14 ' О некоторых вопросах, возникших в судебной практике при применении Жилищного кодекса Российской Федерации', at p. 15 (b).

³³ Е.А. СУХАНОВ (ed.), *Гражданское право*, Т. 3, Wolters Kluwer, Moscow, 2008, at p. 567.

- The partner has been formally installed in the home by the tenant. This can occur in two ways:
 - At the moment of entering into the social tenancy contract: by listing the partner in the contract as a member of the tenant's family who intends to occupy the home with him/her (Art. 69(3) Russian Housing Code);
 - At a later moment: with the consent of all family members residing in the home and the consent of the landlord (Art. 70(1) Russian Housing Code). The landlord therefore has the right to refuse the instalment if the home is too small for the requested number of people (according to the municipal norms for social tenancies). The refusal of consent by family members cannot be overruled by a court order, while the refusal of consent by the landlord can be overruled by a court.³⁴
- The partner is granted the status of a member of the tenant's family by a court order.

The Russian Supreme Court has stressed that, according to the law, an informal partner can be acknowledged as a member of the tenant's family only in exceptional circumstances and only by means of a court order. When deciding on such cases, the courts must take into consideration circumstances such as the intention of the tenant to install the partner in the home as a member of his/her family, the duration of the cohabitation, the fact of sharing the same household, and whether the non-tenant partner has another home.³⁵

An informal partner who has acquired the status of a member of the tenant's family enjoys exactly the same rights as the tenant (Art. 672 Russian Civil Code). This rule is mandatory and cannot be set aside by an agreement.

Therefore, although the law refers to the tenant and his/her family members, the literature rightly speaks of the joint tenancy of all family members.³⁶

If the family relationship between the tenant and the family member ends and the ex-family member continues to occupy the home, he/she retains the occupational rights (Art. 69(4) Russian Housing Code). Therefore, once an informal partner acquires the status of being a member of the tenant's family, he/she retains the right to occupy (part of) the home, independent of the will of the partner-tenant, even after the relationship has ended.

If the other partner is a commercial tenant (i.e. rents a home in the private housing market), the rights of the non-tenant partner depend on the intention of the partner-tenant. The non-tenant partner's entitlement is based on the contract between the

³⁴ Постановление Пленума Верховного Суда РФ от 2 июля 2009 года № 14 ' О некоторых вопросах, возникших в судебной практике при применении Жилищного кодекса Российской Федерации', at p. 26.

³⁵ Постановление Пленума Верховного Суда РФ от 2 июля 2009 года № 14 ' О некоторых вопросах, возникших в судебной практике при применении Жилищного кодекса Российской Федерации', at p. 25.

³⁶ Е.А. СУХАНОВ (ed.), *Гражданское право*, Т. 3, Wolters Kluwer, Moscow, 2008, at p. 565.

partner-tenant and the landlord.³⁷ The partner-tenant can list his/her informal partner in the initial rental contact as one of the people intending to occupy the home (Art. 677(2) Russian Civil Code) or can install him/her at a later date, subject to the consent of the landlord (Art. 679 Russian Civil Code). In both cases the non-tenant partner will then have the same right to occupy the home as the tenant-partner (Art. 677(2) Russian Civil Code). The right of the non-tenant partner to occupy the home after separation will depend on the provisions of the tenancy agreement and any agreement that may be reached between the partners. If no such provisions have been made, the non-tenant partner will retain his/her occupancy rights even against the will of the other partner.

The restrictive approach to acknowledging an informal partner as a member of the family of his/her partner who is a sole owner or sole tenant of the family home is not in compliance with the ECtHR's decision in the 2004 case of *Prokopovich v. Russia*. Although this case was governed by the old 1983 Russian Housing Code, it continues to remain relevant. In this case, the European Court decided that the ten-year informal relationship between Ms. Prokopovich and her deceased partner fell under the protection of Art. 8 ECHR. Therefore Ms. Prokopovich was entitled to take over her deceased partner's social tenancy despite the fact that her instalment in the home did not satisfy the legal requirements of the old law (official registration).³⁸

23. Are there specific rules on a partner's rights of occupancy of the home:

a. In cases of domestic violence?

No.

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

If the partner-owner's absence is temporary, it has no effect on the occupancy rights of the other partner, except if the home has been bought with the help of a mortgage and the mortgage cannot be transferred to the other partner (for instance, because he/she does not have a sufficient income). If the absence is permanent due to death or other reasons, the home will pass to the deceased partner's heirs and the other partner will then have no right of occupancy.

The position of the informal partner of a tenant depends on whether their home is a social or commercial tenancy.

If the absent partner is a social tenant and a court has granted his/her informal partner the status of a family member, the temporary absence of the tenant will not affect the occupancy rights of his/her family members (Art. 71 Russian Housing Code). In the event of the death or permanent absence of the tenant, an adult family

³⁷ Е.С. КРЮКОВА, 'Правовое положение лиц, проживающих с нанимателем по договорам социального и коммерческого найма: сравнительный анализ', *Семейное и жилищное право*, 2006, at p. 17.

³⁸ ECtHR, *Prokopovich v. Russia*, No. 58255/00, 18.11.04, at § 29.

member (thus also the informal partner) can require the transfer of the tenancy to him/her (Art. 672(2) Russian Civil Code and 82(2) Russian Housing Code).

In the event of the death or permanent absence of a partner who is a commercial tenant, an informal partner can claim the transfer of the tenancy to him/her subject to the same conditions as those enjoyed by the absent partner, provided that the informal partner has been properly installed. If the home is occupied by other properly installed adults in addition to the informal partner, all those adults will have to agree on who is to take over the tenancy of the absent tenant. If no agreement can be reached, all the adults will become joint tenants (Art. 686(2) Russian Civil Code).

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?

There are no specific rules governing transactions related to a home which is jointly owned by partners in an informal relationship. The general rule in Art. 246(1) of the Russian Civil Code is that joint owners enter into transactions related to their entire home jointly. That means that any transaction related to the home requires the written consent of both partners, irrespective of the size of their shares in the home. Under Art. 246(2) Russian Civil Code, each of the joint owners can independently dispose of (sell, donate, dispose of by will, mortgage or dispose of in any other way) his or her share in the jointly owned home. He/she is restricted in this respect, however, by the provisions of Art. 250(1) Russian Civil Code; under these provisions, a joint owner who wishes to sell a share in a jointly owned home to a third person must first offer this share to the co-owner subject to the same conditions as agreed upon with the third person. Under Art. 250(2) Russian Civil Code, a joint owner who wishes to sell his/her share to a third person has to send the other joint owner(s) written notification containing all the conditions which pertain to the transaction. He/she is free to sell the share to a third person if the co-owner does not agree to buy the share in the home within one month.

This means that a partner has a preferential right of purchase if his/her partner intends to sell his/her share in a jointly owned home to a third party. This right applies only to a sale, and does not protect the partner if the other partner decides to donate, dispose of by will or mortgage his/her share in the jointly owned home.

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

In the absence of any specific rules, the partner-owner is free to dispose of the home solely owned by him/her.

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

In the case of a social tenancy the rights of a non-tenant partner to whom the court has granted the status of a member of the tenant's family are equal to those of the tenant.

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

If the partner is a social tenant and his/her informal partner has been granted the status of a family member of the tenant by the court, his/her written consent is required for any transactions related to the tenancy (Art. 70 (instalment of other persons), 72 (swap), 76 (sublease), 82 (alteration of rental contract) and 82 (2) (termination of the tenancy) Russian Housing Code).

If the absent partner is a commercial tenant and the informal partner is either mentioned in the initial tenancy contract or is later installed with the consent of the landlord, his/her written consent is required for any transactions related to the tenancy (Art. 679-680 Russian Civil Code (instalment of other persons) and Art. 687(1) Russian Civil Code (termination of the tenancy)).

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

There are no specific rules governing partners in informal relationships who act as each other's agent. A partner can act as an agent for the other partner under the same circumstances as any unrelated person can, namely when the other partner has given him/her a power of attorney.

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

Informal relationships do not as such give rise to the joint ownership of assets.³⁹ In order to become joint owners of assets, informal partners have to either:

- Create joint ownership by agreement. According to Art. 244(4) Russian Civil Code, parties can create a regime of joint ownership by agreement.
- Acquire together, in both names, an undividable asset (Art. 244(4) Russian Civil Code).

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.

There are no special provisions on household goods under Russian law. No such provisions even exist in respect of spouses.

³⁹ Постановление президиума Челябинского областного суда от 8 июня 2005 г. (надзорное производство № 4г05-1168) / not officially published, available at Гарант. Cited by В.С. ПАНИН, *Проблемы правового регулирования фактических брачных отношений в России*, dissertation, Moscow, 2012, at p. 101.

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?

Partners can provide by agreement for all or some of the assets that they already own and/or all or some of the assets that they later acquire during their relationship to be designated as their joint property, irrespective of the name in which these assets are acquired.

Panin suggests in his recent dissertation that an implied agreement can be derived from the fact that the parties live together, run a joint household and commonly use the assets acquired by either of them for the needs of the family.⁴⁰ However, it is unclear as to whether the courts will be prepared to regard such 'implicit' agreements as cohabitation agreements.

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

By all means of proof admitted by the Russian Code of Civil Procedure. There are no rebuttable presumptions.

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

By all means of proof admitted by the Russian Code of Civil Procedure. There are no rebuttable presumptions.

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

Partners can become jointly liable for debts in the following situations:

- If they entered into an obligation jointly (e.g. signed a tenancy agreement together). Under Art. 321 Russian Civil Code they are supposed to be liable to an equal extent, unless the law or the agreement provides otherwise;
- If debts relate to an asset that they own jointly (under Art. 249 Russian Civil Code, joint owners are jointly liable for maintaining joint assets and are responsible for all related costs). In this case, partners are liable for debts in proportion to their shares in the joint property;
- If the debts relate to the home owned by one of the partners, provided that the other partner is acknowledged as a member of the owner's family under Art. 31 Russian Housing Code. In such case, the partners are jointly and severally liable for all costs related to the use of the home (Art. 292(1) Russian Civil Code, Art. 31(3) Russian Housing Code);

⁴⁰ В.С. ПАНИН, *Проблемы правового регулирования фактических брачных отношений в России*, dissertation, Moscow, 2012, at p. 90, note 1.

- If the debts relate to a home rented by one of the partners as a social tenant, provided that the other partner is acknowledged as a member of the social tenant's family under Art. 69 Russian Housing Code. In such case, the partners are jointly and severally liable for all debts arising from the social rental contract (Art. 69(2) Russian Housing Code);
- If the debts relate to a home rented by one of the partners as a commercial tenant, provided that the partners have signed an agreement on joint and several liability for all debts arising from the commercial rental contract (Art. 677(4) Russian Civil Code).

32. On which assets can creditors recover joint debts?

There are no specific rules on the recovery of partners' joint debts. Creditors can recover joint debts from any assets of the partners under the general rules established by the general provisions of the Russian Federal Act on the Execution Procedure.⁴¹ According to the priority rule provided for in Art. 69(3) of this Act, debts are first recovered from the financial assets of the debtor(s), firstly those denominated in national currency and, secondly, those denominated in foreign currency, and then from any other assets.

Article 445 of the Russian Code on Civil Procedure⁴² specifies the assets from which no recovery is possible. Under these rules, no recovery is possible from:

- The home or part of the home serving as the only home of the debtor and his/her family, except when the recovery is sought by the mortgage lender and such recovery is permitted under the legislation governing mortgages;
- Land on which the above-mentioned home is situated, except when the recovery is sought by the mortgage lender and such recovery is permitted under the legislation governing mortgages;
- Household goods and objects for personal use (clothing, footwear, etc.), with the exception of jewellery and other luxury articles;
- Objects which are essential for professional activities, with the exception of objects whose value exceeds the statutory minimum wage;
- Certain objects used for individual business activities;
- Seeds which are necessary for the next season's sowing;
- Food and money not exceeding the amount of the statutory minimum wage, calculated separately for the debtor and each dependent family member;
- Fuel which is necessary for cooking and heating during the heating season;
- Means of transport and other assets essential for a disabled debtor.

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.

⁴¹ Федеральный закон "Об исполнительном производстве" от 02.10.2007 N 229-ФЗ www.consultant.ru/popular/ispolproisv/69_8.html#p1044 © КонсультантПлюс, 1992-2015.

⁴² Гражданский процессуальный кодекс РФ: www.consultant.ru/popular/gpkrf/8_62.html#p4069 © КонсультантПлюс, 1992-2015.

There are no specific rules governing the administration of assets jointly owned by the partners in an informal relationship. Under the general rule of Art. 246(1) Russian Civil Code, joint owners jointly administer their joint assets in their entirety. That means that any act of administration related to the whole asset requires the consent of both partners, irrespective of the extent of their shares in that asset. However, under Art. 246(2) Russian Civil Code, each of the joint owners can independently dispose of (sell, donate, dispose of by will, mortgage or dispose of in any other way) his/her share in the joint asset. He/she is restricted in that respect by the provisions of Art. 250(1) Russian Civil Code, which require a joint owner who wishes to sell a share in a joint asset to a third person first to offer this share to the co-owner subject to the same conditions as agreed upon with the third person. This requirement does not apply to the sale of the share at a public auction. It is also not applicable to the alienation of parts of jointly owned land on which a building is situated or parts of jointly owned buildings.

Under Art. 250(2) Russian Civil Code, a joint owner wishing to sell his/her share to a third person must send the other joint owner(s) written notification containing all the conditions which pertain to the transaction. He/she is free to sell the share to a third person if the co-owner does not agree to buy the movable asset within ten days or the immovable asset within a month. This means that a partner has a preferential right of purchase if his/her partner intends to sell a joint asset to a third party. This right is applicable only to the sale of an asset, and does not provide protection if the other partner decides to donate, dispose of by will or mortgage joint assets.

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?

No.

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?

Not applicable.

b. The creditor's contributions during the relationship (such as the raising of children)?

Not applicable.

c. The standard of living during the relationship?

Not applicable.

d. Other factors/circumstances (such as giving up his/her career)?

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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.

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.

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?

There are no specific rules applying to the determination of the ownership of partners' assets. Therefore, the general rules of the Russian Civil Code apply. The main rule is that the owner is the person who has title of ownership. There is no presumption of joint ownership of assets held by partners for common use. That means that if neither partner can prove title of ownership, the one who has the asset in his/her possession will be in the stronger position as, under Art. 302 Russian Civil Code, only an titular owner (or a titular lifelong hereditary possessor, under Art. 305 Russian Civil Code) can regain an asset from a possessor.

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 are no specific rules as to the property division which are applicable either to all or to certain property. The general rules are those applying to the division of joint ownership (Art. 252 Russian Civil Code). Under this rule, joint owners can divide jointly owned assets in accordance with their agreement (Art. 252(1) Russian Civil Code). If the owners fail to reach agreement, either of them can apply for a division by a court order (Art. 252(3) Russian Civil Code). The assets will then be divided in kind. This means that the judge will order that every dividable joint asset should be divided between the partners in accordance with their shares in that asset. The shares of the joint owners will be regarded as equal, unless stated otherwise in law or in the agreement between the owners (Art. 245 Russian Civil Code). As the judge has to divide assets in kind, an owner cannot be forced to accept compensation without his/her consent (Art. 252(4) Russian Civil Code). An exception to this rule is only possible when one of the owners' share is insignificant.

If the asset is physically, economically or legally undividable in kind (e.g. a motor vehicle, or a collection of postage stamps) the judge will attribute the asset to one of the owners and compensation will be ordered to be paid to the other owner (Art. 252(3) Russian Civil Code).

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)?

In the absence of specific rules, partners have no preferential rights to any objects. However, if both partners claim a certain object that cannot be divided in kind (e.g. a motor vehicle), the judge will take all the circumstances of the case into consideration. The title of ownership (if an asset is held in the name of one of the partners, while the partners have created joint ownership in an agreement) and the duration of the relationship will not then be of relevance. The needs of each partner (e.g. professional use, occupational travel or disability) and of the children will be taken into consideration as circumstances of the case.

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

Partners in informal relationships become jointly liable for debts not as a couple, but instead as two unrelated persons. Therefore, their joint liability for debts does not depend on their relationship and the debts cannot be 'settled' when partners separate. In other words, separated partners remain jointly liable for their joint debts. The only way to 'settle' them is in accordance with the general rules on the law of obligations concerning the transfer of debts. Under Art. 391(1) Russian Civil Code,

such transfers are possible only with the consent of both partners (the debtors) and the creditor(s). If such consent is given, the partners can agree, for instance, that the mortgage on the house will be paid by one partner and the personally secured loan for the car by the other partner.

45. What date is decisive for the determination and the valuation of:

a. The assets?

The law does not specify the date to be applied, but the partners can agree on the applicable date.

b. The debts?

The law does not specify the date to be applied and it is not possible to determine such date by agreement.

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?

Seeking such compensation is impossible under Russian law.

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?

The surviving partner generally has no rights of inheritance in the case of intestate succession. However, if the surviving partner is unable to work and has been living with and been maintained by the other partner for at least one year, he/she has rights of inheritance in the case of intestate succession (Art. 1148(2) Russian Civil Code). This right of inheritance accrues to any disabled member of the household who has been maintained by the deceased person, and not just to a partner in the informal relationship.

Under Art. 1148(2) Russian Civil Code, a disabled member of the household will inherit and rank alongside heirs who are entitled to the inheritance. Article 1145 provides for seven ranks of heirs. Normally, the existence of higher-ranking heirs precludes lower ranks from inheriting. Equally-ranking heirs receive equal shares of the inheritance (Art. 1141(2) Russian Civil Code).

A surviving partner who qualifies under Art. 1148(2) Russian Civil Code will inherit at the rank called to inheritance in the particular case. If, for instance, the first rank (children, parents and spouses) is called to inheritance and the deceased partner has two children and one living parent, the surviving partner will inherit one fourth of the deceased's estate, as will each of the children and the parent.

A surviving partner who qualifies under Art. 1148(2) Russian Civil Code is entitled to a reserved share under the provisions of Art. 1148(2) Russian Civil Code. That means that he/she is entitled to half of the share that he/she would have received in the case of intestate succession, even if the deceased partner has disinherited him/her in his will.

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?

No.

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

No.

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

Yes. Under Russian law, however, freedom of testation (Art. 1119) is limited by the institution of reserved shares. Persons entitled to reserved shares are listed in Art. 1149 Russian Civil Code. The first-ranking heirs (children, spouses and parents) are entitled to reserved shares, provided that they are unable to work due to their being minors, having reached retirement age or being disabled, irrespective of whether they were maintained by the deceased person.

The heirs mentioned in Art. 1148(1) (i.e. heirs of any rank who are unable to work) are entitled to a reserved share, provided that they have been maintained by the deceased for at least one year, irrespective of whether they lived with the deceased. The heirs mentioned in Art. 1148(2) (i.e. any unrelated disabled persons who have been maintained by the diseased person for at least one year) are entitled to reserved shares, provided that they lived with the deceased person for at least one year.

Persons entitled to a reserved share cannot be fully disinherited by will. Irrespective of the contents of the will, they are always entitled to half of the share that they would have received in the case of intestate succession.

Therefore the deceased partner's right to dispose of property by will in favour of the surviving partner is limited only by the possible rights of persons entitled to a reserved share.

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

If testator is married, it is only relevant for his/her right to dispose of property by will in favour of the surviving partner if the testator's spouse is entitled to a reserved

share. That is the case only if he/she is unable to work due to having reached retirement age or due to disability (Art. 1149 Russian Civil Code).

c. If the testator has children?

If the testator has children, it is only relevant for his/her right to dispose of property by will in favour of the surviving partner if the children are entitled to reserved shares. That is the case only if the children are unable to work due to their being minors or disabled or due to their reaching retirement age (Art. 1149 Russian Civil Code).

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

a. In general?

No, Russian law does not allow this.

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

No, Russian law does not allow this.

c. If either testator has children?

No, Russian law does not allow this.

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?

No. Article 1118 Russian Civil Code explicitly states that the only possibility to dispose of property upon death is by making a will.

However, the testator (*legator*) can make a *legate* in favour of the surviving partner. A *legate* is a provision in the will obliging the heir to transfer into ownership or possession of the third person (*legataris*) an asset belonging to the deceased's estate; to acquire and transfer to the *legataris* certain assets; to perform for the *legataris* certain work or services, or to make periodic payments to the *legataris* from the estate, etc. (Art. 1137 Russian Civil Code). A particular form of *legate* explicitly mentioned in the Russian Civil Code is the right to lifelong occupancy of the house belonging to the deceased's estate (Art. 1137(2) Russian Civil Code). As a *legate* can be made in favour of any person, it can also be made in favour of a surviving partner.

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

Yes. The only limitation is that if the spouse is entitled to a reserved share, the *legator* cannot affect this share.

c. If either partner has children?

Yes. The only limitation is that if the child(ren) is/are entitled to a reserved share, the *legator* cannot affect this share.

53. Is the surviving partner entitled to a reserved share⁴³ 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?

A surviving spouse is entitled to a reserved share if he/she is unable to work and has been living with and been maintained by the other partner for at least one year (Art. 1149 and 1148(2) Russian Civil Code). A partner entitled to a reserved share cannot be wholly disinherited by will. Irrespective of the contents of the will, he/she is always entitled to one half of the share that he/she would have received in the case of intestate succession.

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

No data available.

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?

No data available.

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?

No data available.

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?

No, there are no specific rules; therefore, the agreements between partners in an informal relationship are governed by the general rules of the law of obligations in the Russian Civil Code. The provisions of the Russian Family Code governing matrimonial property agreements and maintenance agreements between spouses are not applicable to agreements between informal partners.

⁴³ 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.

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

a. The division of tasks as between the partners?

There are no legislative provisions or case law on this matter. In the absence thereof, academic literature suggests that partners in informal relationships can enter into agreements regulating the division of household tasks, and the care for children and other family members.⁴⁴

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

Yes.

c. Their property relationship?

Partners can create a regime of joint property by agreement. They can also make specific provision for the possession, use and administration of joint property, and determine whether their shares in joint property should be equal or should depend on their contributions. If no such provision is made, their shares will be regarded as equal. A matrimonial property regime of community of property or any other form of community of property cannot be created by agreement. Partners can also make an agreement on dividing or reallocating their property upon separation.⁴⁵

d. Maintenance?

Partners can make an agreement on maintenance during and after the termination of the relationship.

e. The duration of the agreement?

There are no legal provisions precluding partners from specifying the duration of these agreements. Such agreements are generally entered into for an undetermined period of time and can be dissolved by either partner at any time after sending notification to the other partner.⁴⁶

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

⁴⁴ С.Ю. ФИЛИППОВА, 'Гражданско-правовые средства достижения цели построения семьи путем фактических брачных отношений', *Семейное и жилищное право*, 2010, at p. 4; В.С. ПАНИН, *Проблемы правового регулирования фактических брачных отношений в России*, dissertation, Moscow, 2012, at p. 85.

⁴⁵ С.Ю. ФИЛИППОВА, 'Гражданско-правовые средства достижения цели построения семьи путем фактических брачных отношений', *Семейное и жилищное право*, 2010, at p. 4-6.

⁴⁶ С.Ю. ФИЛИППОВА, 'Гражданско-правовые средства достижения цели построения семьи путем фактических брачных отношений', *Семейное и жилищное право*, 2010, at p. 5.

Yes. Partners can also reach agreement on dividing or reallocating their property upon separation.⁴⁷

60. Are the agreements binding:

a. Between the partners?

Agreements are binding between the partners, unless they contain provisions violating mandatory rules of law (e.g. an agreement precluding a woman from seeking the establishment of paternity). Agreements regulating purely personal relationships (e.g. who is going to walk the dog) are valid, but not legally enforceable.

b. In relation to third parties?

Agreements are binding in relation to third parties, unless they contain provisions violating mandatory rules of law (e.g. an agreement precluding a woman from seeking employment).

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

Partners may voluntarily comply with the agreement, but no legal remedy is available in the event of non-performance.

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

Not applicable.

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

Agreements can be made at any stage.

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

a. As between the partners?

There are no special provisions; therefore, agreements can also be made verbally. However, proving the existence and contents of a verbal agreement could constitute a substantial difficulty. The absence of specific form requirements has prompted some authors to suggest that the existence of an agreement can be derived from the behaviour of the parties: living together, running a joint household and supporting each other.⁴⁸ However, it is unclear as to whether the courts will be prepared to consider such 'implicit' agreements as cohabitation agreements. It has been rightly suggested that if an agreement between partners relates to immovable property, such

⁴⁷ С.Ю. ФИЛИПОВА, 'Гражданско-правовые средства достижения цели построения семьи путем фактических брачных отношений', *Семейное и жилищное право*, 2010, at p. 4.

⁴⁸ В.С. ПАНИН, *Проблемы правового регулирования фактических брачных отношений в России*, dissertation, Moscow, 2012, at p. 90, note 1.

an agreement should be in writing and made subject to the special registration which is required for all transactions relating to immovable property.⁴⁹

b. In relation to a third party?

There are no special provisions; therefore, agreements can also be made verbally. However, proving the existence and contents of a verbal agreement could constitute a substantial difficulty.

It has been rightly suggested that if an agreement between partners relates to immovable property, such an agreement should be in writing and made subject to the special registration which is required for all transactions relating to immovable property.⁵⁰

65. Is independent legal advice required?

No.

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

No data available.

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

No data available.

G. Disputes

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

There are no specific provisions on that matter; therefore, an ordinary civil law court is competent to decide on disputes between partners in an informal relationship.

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

Yes.

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?

⁴⁹ Е.Н. КИМИНЧИЖИ, 'Об имущественных отношениях сожительствующих лиц', *Семейное и жилищное право*, 2008, at p. 9.

⁵⁰ Е.Н. КИМИНЧИЖИ, 'Об имущественных отношениях сожительствующих лиц', *Семейное и жилищное право*, 2008, at p. 9.

In the absence of special provisions, the court can scrutinise an agreement made by the partners in an informal relationship in the same way as it can scrutinise any civil law agreement. This scrutiny goes no further than ensuring compliance with mandatory rules of law. The general principle of contract law (*pacta sunt servanda*) strictly applies to such agreements.

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)?

The court cannot override or modify the agreement on account of unfairness to a partner, the rights of a third party or on any other grounds. The special provisions of the Russian Family Code do not apply to agreements between informal partners. Thus, the rules of Art. 102 Russian Family Code entitling the court to set aside or revise a maintenance agreement if it is unfair to a spouse or ex-spouse who is entitled to maintenance under the provisions of the Russian Family Code are not applicable to maintenance agreements between informal partners.

A court can modify or set aside an agreement between informal partners on the ground of a change of circumstances (Art. 451 Russian Civil Code) as this ground is available in the case of any civil contract. The court is entitled to order that a contract must be amended or dissolved if the circumstances have changed so substantially that the performance of the contract would lead to serious harm to the party/parties in question. Under the second part of sub. 2 of Art. 451 Russian Civil Code, a change is considered to be substantial if the parties would not have entered into their contract in the first place if they had been able reasonably to foresee that change, or if the provisions of such a contract would then have been different. However, establishing the existence of a substantial change of circumstances is in itself not sufficient for Art. 451 Russian Civil Code to apply. Article 451 will only apply if the following four requirements are simultaneously satisfied:

- The parties did not foresee such a change of circumstances at the time of entering into the contract;
- The change of circumstances has occurred due to an event which the claimant could not have foreseen, taking into consideration a normal level of care and caution;
- Performing the contract without amending it would lead to such a serious violation of the property interests of the parties that the claimant would lose, to a significant extent, the consideration to which he/she was entitled under the contract;
- It does not follow from the essence of the contract that the claimant has to bear the risks of a change of circumstances.

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?

The partners can resort to mediation. Mediation is regulated by the 2010 Russian Act on Alternative Procedure of Dispute Resolution (Mediation Procedure) (the 'Russian ADR Act').⁵¹ According to Art. 1(2) of this Act, the ADR procedure is also applicable to family disputes. Resorting to ADR is voluntary. The parties can make a separate mediation agreement or insert a mediation clause into their cohabitation agreement. Mediation agreements must be made in writing (Art. 7(1) Russian ADR Act). ADR can be applied before and during the court procedure. A judge may also suggest to the parties that they should employ ADR (Art. 7(3) Russian ADR Act).

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?

According to Art. 7(3) Russian ADR Act, a mediation agreement or even a mediation procedure that has already started does not preclude a party or the parties from applying to the court, unless a Federal Act provides otherwise. As there are no special provisions on this matter in respect of family disputes, a mediation agreement does not preclude the partner(s) in informal relationships from seeking to resolve the dispute in court.

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 official data are available. However, it is common knowledge that mediation in family cases in Russia is only just beginning to take shape. At present, therefore, there are very few, if any, cases in which informal partners have sought recourse to ADR/family mediation.

⁵¹ Федеральный закон от 27 июля 2010 г. N 193-ФЗ 'Об альтернативной процедуре урегулирования споров с участием посредника (процедуре медиации)', available at ГАРАНТ: base.garant.ru/12177508/#ixzz3U5T7CPvv.