

NATIONAL LEGISLATION: SWEDEN

1.	ACT (2003:276) on Cohabitation (Cohabitees Act)	2
2.	Why a Cohabitees Act?	2
3.	Who counts as a cohabitee?	2
4.	When does the Cohabitees Act apply?	3
5.	What property does the Cohabitees Act cover?	3
6.	What applies during the cohabitee relationship?	3
7.	When does a cohabitee relationship end?	4
8.	Request for division of property	4
9.	Division of property	4
10.	Exceptions	5
11.	Taking over the other cohabitee's dwelling	5

1. ACT (2003:276) ON COHABITATION (COHABITEES ACT)

The following text is a slightly revised and shortened extract from the Brochure, "Cohabitees and their joint homes – a brief presentation of the Cohabitees Act", published in English by the Swedish Government Offices, in 2012. The brochure is intended to give a brief – and to a certain extent simplified – presentation of Sweden's 2003 Cohabitation Act, which altogether consists of 32 §§. The Swedish government has abstained from producing any translation into any foreign language (English, German, French etc.) of the Cohabitation Act itself; a brochure of this kind has been considered to be more useful. Below, relevant sections (§§) have been added by CEFL's Swedish national reporters.

To receive a more comprehensive, detailed and nuanced picture of Swedish law regarding informal relationships, it is necessary to read the Swedish National report on informal relationships, by Prof. Maarit Jänterä-Jareborg, Prof. Margareta Brattström and LL.M. LisaMarie Eriksson.

2. WHY A COHABITEES ACT?

The Cohabitees Act provides minimum protection for the weaker partner when a cohabitee relationship ends. It regulates the division of the cohabitees' joint home and household goods of cohabitees, a cohabitee's right to take over a dwelling not included in the division of property and limitations on the right to dispose of the joint home. The protection provided by the Cohabitees Act is limited in relation to that which applies for married couples and registered partners. For example, there are no provisions in the Cohabitees Act concerning inheritance or maintenance obligations.

3. WHO COUNTS AS A COHABITEE?

By cohabitees is meant two people who live together on a permanent basis as a couple and who have a joint household (1 §). Whether the cohabitees are of the same sex is of no importance. To count as a cohabitee three criteria must be fulfilled: 1) The cohabitee must live with his/her partner on a permanent basis. Thus, it is a question of relationships that are not of short duration; 2) The cohabitee and his/her partner must live together as

a couple; 3) The cohabitee must share a household with his/her partner, which means sharing chores and expenses. Hence, two siblings living together are not considered to be cohabitees.

4. WHEN DOES THE COHABITEES ACT APPLY?

The Cohabitees Act applies only to relationships in which neither of the cohabitees is married or a registered partner. Cohabitees who want to keep their financial affairs separate may conclude an agreement to the effect that the rules on division of property contained in the Cohabitees Act shall not apply to their cohabitee relationship (9 §). They may also agree that certain property shall not be included in the division of property. The agreement shall be in writing and signed by the cohabitees or the prospective cohabitees. It will not be registered and does not need to be attested.

5. WHAT PROPERTY DOES THE COHABITEES ACT COVER?

The Cohabitees Act applies only to the cohabitees' joint home and household goods (3 §). It applies to all kinds of permanent dwellings (houses, apartments acquired for the couple's joint use (5 §) and household goods, meaning the equipment which is normally part of the home such as furniture and kitchen utensils (6 §). The Act does not apply to other property such as, for example, bank assets, shares, cars and boats. Nor does it apply to summer houses. Such assets fall outside the division of property and the cohabitee that owns the property keeps it after a separation.

6. WHAT APPLIES DURING THE COHABITEE RELATIONSHIP?

The main rule is that in a cohabitee relationship each cohabitee owns and manages his or her property alone and is responsible for his or her debts. As in the case of married couples or registered partnerships, there are certain limitations on a cohabitee's possibilities of disposing of property. A cohabitee may not, without the consent of the other cohabitee, give away, sell, mortgage/pledge or let the joint home (23 § para. 1-3). Nor may

a cohabitee, without the consent of the other, give away, sell or pawn joint household goods (23 § para. 4).

7. WHEN DOES A COHABITEE RELATIONSHIP END?

A cohabitee relationship ends if at least one of the cohabitees enters into marriage, if the cohabitees separate, or if one of them dies (2 § para. 1). A cohabitee relationship also ends if one of the cohabitees applies to the district court for the latter to appoint an estate administrator to divide the property or for the right to remain in a joint home included in the division of property (2 § para. 2). The cohabitee relationship also ends if one of the cohabitees institutes an action to be allowed to take over a joint home not included in the division of property.

8. REQUEST FOR DIVISION OF PROPERTY

When a cohabitee relationship ends, a division of property shall be made at the request of either of the cohabitees (8 §). If the cohabitee relationship ends as a result of the death of one of the cohabitees, only the surviving cohabitee may request a division of property. If neither party requests a division of property, each retains his/her own property. A request for division of property shall be made not later than one year after the relationship ended. If a cohabitee relationship ends following the death of one of the cohabitees or if a cohabitee dies within one year of the end of a relationship, a request shall be made no later than when the estate inventory is drawn up.

9. DIVISION OF PROPERTY

A division of property includes the cohabitees' joint dwelling and household goods if the property "was acquired for joint use" (3 §). Who paid for the property is of no account. However, it must be borne in mind that the rules on division of property set out in the Cohabitees Act do not apply if one of the parties has moved into the other party's dwelling even if the couple shared amortisation and other costs. But if such a dwelling has been sold and the money used for a new joint home, the new dwelling shall be included in the division of property. Before the division of property takes place, a deduction shall be made to cover debts (13 §). What remains shall in principle be divided equally between the cohabitees (14

§). The cohabitee most in need of the dwelling or household goods is entitled to receive the property if this is reasonable (16 § para. 2). If the other cohabitee does not receive other property from the joint home to the same value, the cohabitee taking over the dwelling or household goods shall pay the corresponding sum of money to the other cohabitee (22 § para. 3).

10. EXCEPTIONS

Exceptions to the division into halves may be made, however, if it is unreasonable, particularly bearing in mind how long the relationship lasted (15 §). In special cases, adjustment can be made so that each party simply retains his/her property. Another exception to this division is the so-called little base amount rule. It only applies in the event of the death of one cohabitee and means that out of the property to be divided, the surviving cohabitee always – if there is sufficient property – receives as much as corresponds to two price base amounts.

11. TAKING OVER THE OTHER COHABITEE'S DWELLING

A tenant owner's (of a cooperatively owned building) right to an apartment or tenancy that was not acquired for joint use but which nevertheless has been used jointly, is not included in the division of property. On the other hand, provided it is reasonable, the cohabitee who best needs the dwelling may take it over from the other cohabitee. However, if the cohabitees have no children, there must be very strong reasons for taking it over. The party taking over the dwelling shall fully compensate the other for the value of the dwelling. Cohabitees cannot remove the right to take over the dwelling by agreement. The question of taking over the dwelling may also arise if the rules on division of property under the Cohabitees Act have been removed under an agreement. The cohabitee wanting to take over a tenancy or the tenant owner's right to an apartment must request doing so no later than one year after the cohabitee relationship ended (22 §). The respite of one year does not apply if the cohabitee who possesses the dwelling dies and the surviving cohabitee remains in the dwelling.