

SWEDISH LEGISLATION

The Inheritance Code (Ärvdabalken)

(SFS 1958:637, with subsequent amendments to Chapter 3 up to and including SFS 2005:435)

Chapter 3. The inheritance rights of a spouse, and the rights of the heirs of the first-deceased spouse in the property left by the subsequently deceased spouse

Section 1

If the deceased was married, the estate¹ shall go to the surviving spouse. If, however, the deceased leaves any direct heir who is not the direct heir of the surviving spouse, the spouse's entitlement to the estate shall only include the inheritance share of such an heir if that heir has forgone his right as provided in Section 9.

The surviving spouse shall always be entitled to receive from the estate of the deceased spouse, as far as the estate suffices, property which, together with the property received by the surviving spouse in property division or constituting that spouse's separate property, corresponds in value to four times the base amount effective under the National Insurance Act (1962:381) at the time death occurred. A will made by the deceased spouse shall be without legal effect in so far as its provisions encroach on the right of the surviving spouse referred to in this paragraph.

Section 2

If at the death of the surviving spouse any direct heir of the first-deceased spouse or the father, mother, brother or sister or issue of a brother or sister of the latter is living, half of the property left by the surviving spouse shall, unless otherwise provided in the third paragraph or in Sections 3-5, Section 6, third paragraph, or Section 7, third paragraph, go to those who then have the best right to take as heirs from the first-deceased spouse. The surviving spouse may not dispose in a will of property which is to go to the heirs of the first-deceased spouse.

If a direct heir received the whole or part of his inheritance from the first-deceased spouse at the death of that spouse, that heir's share in the property left by the surviving spouse shall be reduced correspondingly.

If the property received by the surviving spouse as an inheritance from the estate of the first-deceased spouse represented any other share than half of the sum of this inheritance and the property of the survivor after property division, the heirs of the first-deceased spouse shall take the same share of the property left by the subsequently deceased spouse.

¹ Translator's note: The 'estate' (Swedish 'kvarlåtenskap') as used here and elsewhere in this Code, comprises the separate property of the deceased and the deceased's share in the spouses' marital property.

Section 3

If by gift or any other comparable act the surviving spouse has, without due consideration for the heirs of the first-deceased spouse, caused his or her property to be substantially reduced, compensation shall be paid, from the portion due to the heirs of the survivor at the latter's death, to the heirs of the first-deceased spouse for such part of the reduction as is attributable to their share in the property.

If compensation cannot be paid, the gift or its value shall be restored, provided that the recipient of the gift realized or should have realized that it was to the detriment of the heirs of the first-deceased spouse. Proceedings relating to this may not, however, be commenced more than five years after the receipt of the gift.

If at the time of death a gift which had arisen in the circumstances referred to above was not completed, it may not be enforced in so far as this would be to the detriment of the heirs of the first-deceased spouse.

Section 4

If the value of the property left at the death of the surviving spouse exceeds the value of the spouses' property at the death of the first-deceased spouse, this increase shall be allotted to the heirs of the survivor, provided that it is shown that property of corresponding value has accrued to the survivor by inheritance, gift or testamentary disposition or provided that it may be assumed that the increase in the property originates from gainful employment engaged in by the survivor after the death of the first-deceased spouse.

If the surviving spouse has been guilty of action of the kind referred to in Section 3, in the calculation of whether the property has increased an amount shall be added to the estate corresponding to the reduction of the property caused by the surviving spouse.

Section 5

When the property left by the subsequently deceased spouse is divided, the heirs of each spouse shall be entitled to have allotted to their portion property which belonged to that spouse during the marriage and, in the case of the heirs of the subsequently deceased spouse, also property subsequently acquired by that spouse. Real property may be taken, even though its value exceeds the portion concerned, if money is paid to make up the portion of the other side.

In other respects the procedure shall be governed by provisions relating to marital property division, where applicable.

Section 6

If the surviving spouse has remarried, at the death of that spouse division of the marital and separate property retained by him or her from the previous marriage shall take place as

provided in this chapter, before property division with respect to the new marriage may be performed.

If, in the lifetime of the surviving spouse, division of property is to take place between that spouse and his or her spouse in a new marriage or the heirs of the latter, prior to property division property corresponding in value to that due to the heirs of the first-deceased spouse under Sections 1-4 shall be taken from the marital and separate property retained by the surviving spouse from the previous marriage.

The provisions of Section 4 concerning cases of property accruing to the surviving spouse by inheritance, gift or testamentary provision shall apply correspondingly if, as the result of remarriage, that spouse has, in property division or otherwise on the basis of marital property rights, received property exceeding what he or she previously had.

Section 7

If at death the surviving spouse leaves a cohabitee and division of property between the cohabitees is to be performed, the property retained by the surviving spouse from the marriage shall first be divided as provided in this chapter.

If, in the lifetime of the surviving spouse, division of property is to take place between the surviving spouse and his or her cohabitee or the heirs of the cohabitee, prior to property division property corresponding in value to that due to the heirs of the first-deceased spouse under Sections 1-4 shall be taken from the property of the surviving spouse.

The provisions of Section 4 concerning cases of property accruing to the surviving spouse by inheritance, gift or testamentary provision shall apply if, as the result of division of property with a cohabitee, the surviving spouse has received property exceeding what the spouse previously had.

The provisions of this Code concerning cohabitees apply only to such relationships involving cohabitation in which none of the cohabitees are married.

Section 8

If at the death of the surviving spouse there are only persons entitled to take as heirs from one of the spouses, those heirs shall inherit all.

Section 9

If at the death of the first-deceased spouse someone who is a direct heir of that spouse but not of the surviving spouse forgoes his inheritance from the first deceased spouse in favour of the surviving spouse, the direct heir shall instead be entitled to share in the property of the latter in accordance with the provisions of Section 2.

Section 10

This chapter shall not apply if a divorce case was in progress at the death of the deceased.