

Family law



*Information
on the rules*



Family Law

Information on the rules

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Family Law

This brochure gives a brief description of the provisions relating to marriage and divorce and the economic legal effects of marriage. Provisions applicable to unmarried cohabiting couples and to registered partnership are also discussed.

The brochure further contains information on parenthood, custody and maintenance of children. A short report is also given of certain inheritance rules. The rules described in the brochure are applicable as of 1 January 2007. The provisions described are largely contained in

- the Marriage Code (Swedish Code of Statutes 1987:230)
- Children and Parents Code (reprinted in Swedish Code of Statutes 1995:974)
- Inheritance Code (reprinted in Swedish Code of Statutes 1981:359)
- Cohabitees (Joint Homes) Act (Swedish Code of Statutes 2003:376)
- Registered Partnership Act (Swedish Code of Statutes 1994:1117)

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Contents

1. INTRODUCTION	7
2. MARRIAGE	8
2.1 Impediments to marriage.....	8
2.2 Inquiry into impediments to marriage	9
2.3 The marriage ceremony	9
2.4 Marriage to a foreign citizen.....	10
2.5 Marital surnames	10
2.6 Maintenance obligations between spouses.....	11
2.6.1 During marriage	11
2.6.2 After a divorce	11
2.6.3 Index-linking of maintenance allowances	12
2.6.4 Time limitations	12
2.6.5 Taxation	12
2.7 The assets and liabilities of spouses.....	13
2.7.1 Different kinds of assets	13
2.7.2 Debts of spouses.....	14
2.7.3 The situation during the marriage	14
2.7.4 The situation when a marriage is dissolved.....	15
2.7.5 The joint dwelling and household goods of the spouses	16
2.7.6 Gifts between spouses.....	17
2.8 Divorce	17
2.9 International aspects.....	19
3 COHABITEES.....	20
3.1 Introduction	20
3.2 Dwelling and household goods.....	20
3.2.1 The scope of the Cohabitees Act.....	20
3.2.2 The situation during the cohabitee relationship	21
3.2.3 The situation when a cohabitee relationship ends	21
3.3 Children	23
4 REGISTERED PARTNERSHIP	24
4.1 Introduction	24
4.2 Impediments to registration.....	24
4.3 Inquiry into impediments to registration	25
4.4 Registration	25
4.5 Adoption and specially appointed custodians	25
4.6 Assisted conception	26

4.7	Name, maintenance, finances, dissolution, inheritance	26
4.8	International aspects.....	26
5	PARENTS AND CHILDREN.....	28
5.1	Paternity.....	28
5.1.1	The basic rules on paternity	28
5.1.2	Acknowledgement of paternity	29
5.1.3	Consideration by a court	29
5.1.4	DNA analysis	30
5.1.5	Compensation for maintenance allowance paid.....	30
5.1.6	Paternity by assisted fertilisation.....	30
5.1.7	Parenthood for partners and cohabittees of the same sex.....	31
5.1.8	International aspects.....	31
5.2	The name of the child	31
5.2.1	Forename	31
5.2.2	Surname.....	31
5.2.3	Middle name	32
5.2.4	Other information.....	32
5.3	Custody.....	32
5.3.1	Legal custody – actual care.....	32
5.3.2	Custodian.....	33
5.3.3	Alteration of custody.....	34
5.3.4	A person other than a parent as custodian.....	35
5.3.5	The child’s residence	35
5.3.6	Contact	36
5.3.7	Enforcement of custody decisions, etc.	37
5.4	Guardianship.....	38
5.5	Maintenance.....	39
5.5.1	Maintenance obligation	39
5.5.2	Maintenance allowance	40
5.5.3	Expenses for contact	41
5.5.4	Index-linking of maintenance allowances	42
5.5.5	Amending a judgment or an agreement.....	42
5.5.6	Statutory limitations.....	43
5.5.7	Maintenance support.....	43
5.6	Adoption	44
6	ADMINISTRATORS AND GUARDIANS AD LITEM.....	45
7	DEATH	47
7.1	Estate inventory and estate notification	47
7.2	Declaration of death.....	48
7.3	Division of property	48
7.4	Liability for the deceased’s debts.....	48
7.5	Distribution of estate and agreements on co-occupation of an undistributed estate.....	48
7.6	Survivors entitled to inheritance.....	49
7.6.1	If the deceased was unmarried	49
7.6.2	If the deceased was married.....	50
7.7	Legal portion.....	51

7.8	The right of the child to inherit from its father when its parents were not married	52
7.9	Wills	52
7.10	International aspects.....	53
8	ADVICE AND OTHER ASSISTANCE	54
8.1	Family advice service	54
8.2	Cooperation discussions	54
8.3	The functions of the social services.....	55
8.4	Legal assistance.....	56

1 Introduction

Family law has undergone major revisions in the last few decades. A new Marriage Code entered into force in the 1980s and important amendments were made to the Inheritance Code, *inter alia* by the extension of rights of succession for the surviving spouse.

In the 1990s the rules on custody of children following parents' separation were modernised with a greater emphasis on solutions by consensus.

Furthermore, the provisions on guardianship were reformed. An Act was introduced in 1990 concerning International Issues relating to the Property Relations of Spouses, which, in 2002, was extended to apply to cohabitees.

New provisions on what is termed maintenance support entered into force in 1997. In 2003, a new sex-neutral Cohabitees Act was introduced. And registered partners were given the opportunity to apply to become adoptive parents. In 2004, rules were introduced for the purpose of preventing child marriages and forced marriages. Since 1 July 2005 assisted conception treatment may be given to a woman whose partner or cohabitee is another woman. And, in 2006, the provisions on custody, residence and contact were amended in order to strengthen the perspective of the child.

2 Marriage

2.1 Impediments to marriage

Marriage is contracted between a man and a woman. However, in certain cases a marriage is not desirable from the point of view of society, for social or medical reasons. There are therefore rules on impediments to marriage.

A person under the age of 18 is not considered to be mature enough to be capable of deciding independently about problems of a personal or financial nature that arise when living together with someone on a permanent basis. Thus, in principle only persons who have attained the age of 18 may enter into marriage.

However, a person under the age of 18 may obtain the permission of the county administrative board to enter into marriage. Before the county administrative board takes a decision, the custodian of the minor and the social welfare committee in the municipality where the minor lives are given an opportunity to express their views. If the county administrative board grants permission for marriage, the custodian may appeal against the decision.

Persons who are related to one another in the direct ascending or descending line, for example father and daughter, may not marry. Nor may brothers and sisters of the full blood enter into marriage. However, following application, the county administrative board may grant permission to half brothers and sisters to marry each other.

A person who is already married or a registered partner may not enter into a new marriage while such marriage or partnership subsists. Nor may persons who, in an adoptive relationship, are related to each other in the direct ascending or descending line, marry each other. Two adopted siblings or an adopted child and the natural child of the adoptive parents may marry each other following application to the county administrative board for permission.

2.2 Inquiry into impediments to marriage

Before a marriage may be entered into, the question of whether or not there are any impediments to marriage shall be considered. The inquiry shall be carried out by the local office of the Swedish Tax Agency. The woman and man jointly request the Tax Agency or social insurance office to carry out the inquiry into impediments to marriage.

In conjunction with this inquiry, the man and woman shall provide a written assurance that there are no impediments to the marriage.

If the Tax Agency considers that there are no impediments to the marriage, the woman and man may on request obtain a certificate to this effect. The certificate of no impediments to marriage is valid for four months from its issue and must be submitted to the person performing the marriage ceremony.

2.3 The marriage ceremony

Marriage is entered into either through a church or civil marriage ceremony.

A church marriage is performed within the Church of Sweden or within another religious community that has government permission to perform marriage ceremonies. Permission has been granted to some thirty different religious communities.

A church ceremony is conducted in accordance with the rites of the religious community. Those who want a church ceremony are recommended to get in touch with the relevant religious community for more information.

Anybody may elect to have a civil marriage. Civil marriages are performed by a district court judge or by a special officer appointed by the county administrative board to perform civil marriage ceremonies. The ceremony is often short.

Civil marriage ceremonies are performed in accordance with one of two forms with different wording. One has a more solemn form while the other contains only the basic elements of the marriage ceremony. The man and woman can choose which form for the ceremony they want used.

For further information, those who want a civil ceremony may contact the municipal office or the district court in the district where the marriage ceremony is to be performed. Civil marriages must also be preceded by an inquiry into impediments to marriage.

2.4 Marriage to a foreign citizen

If a man and woman want to enter into matrimony before a Swedish authority, an inquiry shall be made into whether or not there are impediments to marriage under Swedish law. If neither the man nor the woman are Swedish citizens or are resident in Sweden, it must furthermore be ascertained that each of them has the right to marry under the law of a specified state of their own choice, where he or she respectively are either citizens or are resident. However, if both parties so request and there are special reasons for doing so, the inquiry may be made with only the application of Swedish law in such cases too. There is a risk in some cases that the marriage will be considered invalid in the other country. One reason for this may be the fact that the inquiry into impediments to marriage has been carried out in accordance with Swedish law and under the law of the other country there are further impediments to marriage. Another reason may be that banns are required under the law of the other country. There may also be additional reasons, for example, that the other country only accepts a particular form of wedding ceremony, either church or civil ceremony.

The couple should therefore, before the marriage ceremony, find out the applicable legal rules concerning the marriage. Contact should be made in the first instance with the foreign citizen's own embassy. The Ministry for Foreign Affairs Department for Consular Affairs and Civil Law and, to some extent, the Swedish Tax Agency can also provide information.

The information that is provided below concerning the legal effects of marriage and also the relationship between parents and children and inheritance refers to Swedish provisions. It may be appropriate for those who intend to marry a foreign citizen to obtain information from an attorney or other legal adviser concerning the consequences of marriage.

2.5 Marital surnames

The man and woman must choose, not later than at the marriage ceremony, between using one of their surnames as a joint surname or retaining the surname they had immediately before the marriage. They must give notice of their choice in writing to the Swedish Tax Agency or to the person performing the marriage ceremony not later than in conjunction with the ceremony.

A spouse who has taken the surname of the other spouse can also retain his or her former surname as a middle name. If the spouses have different surnames, one of them can take the other's name as a middle name.

The middle name is purely personal. It cannot be passed on to a spouse or to children.

One of the spouses or both spouses can change their surname in accordance with certain rules. A person who wishes to change name may apply to the local tax agency or, in certain cases, to the Patent and Registration Office, Personal Names Department, Box 530, 826 27 Söderhamn. Information tel. 46 (0)8-450 20 54 (weekdays 09.00-15.00)

2.6 Maintenance obligations between spouses

2.6.1 During marriage

During the marriage, each of the spouses is responsible for his or her own and the other spouse's maintenance. Work in the home is also a means of providing maintenance. The Act presupposes that both spouses assume responsibility for both finances and chores at home. The spouses are also liable to provide each other with the information necessary to ensure that the finances of the family can be assessed

If one spouse cannot maintain him or herself completely, the other spouse is also liable to contribute to his or her personal needs. Money or other support, which one of the spouses receives from the other for his or her personal needs, thus becomes the property of the first-mentioned spouse.

If the spouses have children, they are liable to provide for their children's maintenance in accordance with the provisions described in Section 5.5

If the spouses live separately, for example during a period for reconsideration pending a divorce, they are still liable to contribute to each other's maintenance in accordance with what has been stated here.

2.6.2 After a divorce

After a divorce, each spouse is responsible for his or her own support, under the main rule.

However, if one of the spouses needs money for his or her maintenance for a transitional period, he or she is entitled to an allowance from the other spouse according to what is reasonable, having regard to the latter's capacity and other circumstances. A maintenance allowance may be necessary *inter alia* so that the spouse in need should have an opportunity to acquire gainful employment or a better income through training or retraining. The issue of how long a readjustment period of this nature should last must be assessed according to the circumstances in the individual case.

If the spouse in need has difficulty in maintaining him or herself following the dissolution of a long-lasting marriage, he or she may obtain a maintenance allowance for a longer period than only a transitional period. This also applies if there are "exceptional reasons".

If the spouses cannot agree on the matter of maintenance, they should in the first instance contact an attorney's office for advice and assistance (see

Section 8.4). Ultimately, a court must determine the dispute.

Previously, it applied that a divorced spouse entitled to maintenance automatically lost the maintenance allowance on remarrying. This rule no longer applies. However, the maintenance allowance may be reassessed due to changed circumstances which a new marriage or cohabiting with a new partner may signify.

Other changed circumstances may also be referred to for a spouse's maintenance allowance to be reduced through adjustment. However, any change is not sufficient as grounds for adjustment, the change must be manifest. A clearly deteriorated ability to work on the part of the spouse obliged to pay maintenance may be mentioned as an example.

Once a maintenance allowance has been decided, extraordinary reasons are required for a court to increase the allowance as a result of changed circumstances.

An agreement on maintenance for a spouse during or after marriage may also be adjusted when the agreement is unreasonable bearing in mind the circumstances when it came into being and other conditions.

A maintenance allowance may, however, always be freely changed by the parties jointly. If the parties are in agreement, they can write a new agreement. This also applies when the previous maintenance allowance was decided through a court ruling.

2.6.3 Index-linking of maintenance allowances

The maintenance allowance to a spouse is index-linked, that is to say it follows the price trend. The index follows changes in the price base amount under the National Insurance Act (1962:381). In 2002, allowance amounts were increased by 2% and in 2003 and 2004 by 1%. During 2005 and 2006 there were no index-linked changes to maintenance allowances. The changes take place as of 1 February. However, there will be no changes as regards maintenance allowances that were decided after 1 November in the immediately preceding year.

2.6.4 Time limitations

Maintenance allowance claims that a spouse is entitled to become statute-barred, that is to say may no longer be claimed, three years after the date on which they should have been paid.

2.6.5 Taxation

A spouse who is liable to pay maintenance allowance to the other spouse may claim a deduction in his or her tax assessment for the entire allowance that has been paid. The other spouse is taxed for the allowance that has been received.

2.7 The assets and liabilities of spouses

2.7.1 Different kinds of assets

Spouses may have two kinds of assets, namely marital property and separate property. Marital property is the most common and applies unless something else has been specially decided. Property can become separate in the following ways:

a) By a marital property agreement, which is a special form of agreement whereby the spouses agree that certain property or all their property should be separate. A marital property agreement must be in writing and registered with a district court. Witnesses are not required.

A marital property agreement may be drawn up before the marriage ceremony. If the agreement is submitted to the district court for registration within one month of the marriage ceremony, the agreement applies from the date of marriage. In other cases, the marital property agreement does not apply until it has been received by the district court.

Property that is separate by reason of a marital property agreement may be changed to marital property by a new marital property agreement.

b) By conditions attached to a gift. A person who makes a gift can as a condition for the gift decide that the property donated shall be the recipient's separate property. A condition of this nature also applies if the recipient does not marry until later. Property that has become separate in this way cannot be made into marital property by a marital property agreement.

c) By conditions in a will. Here the same rule applies as with gifts. (However, it should be pointed out that special provisions do not apply to property that a spouse has inherited from his or her relatives where there is no will with conditions concerning separate property.)

d) By conditions concerning the nomination of a beneficiary under life insurance, casualty insurance, accident insurance, health insurance or personal pension savings. A person who takes out such insurance or such pension savings may, as a condition in the nomination of a beneficiary, lay down that the property should pass to the recipient as his or her separate property.

e) By substitution. If property that is separate is substituted for other property, the new property also becomes separate. However, it may be decided by a marital property agreement (conditions for gift or will) that the new property shall be marital property and, if that is the case, this shall apply.

As regards the yield on separate property (for example bank interest), the opposite applies. The yield only becomes separate property if this has been directly specified in the marital property agreement (conditions for gift or will).

Property that is not separate property is, as stated above, marital property. The significance of the difference between the two kinds of property is explained below.

2.7.2 Debts of spouses

Each of the spouses is personally responsible for his or her debts. Thus, a spouse's creditors are not entitled to obtain payment out of the property of the other spouse, irrespective of whether the property comprises marital property or is the spouse's separate property.

In the event of attachment of debts against a spouse who lives permanently together with the other spouse, the senior enforcement officer assumes that all the movable property that the spouses have access to belongs to the indebted spouse. Thus, the senior enforcement officer is entitled to implement attachment of the property. If the other spouse owns the property, he or she must prove this in order to be released from the attachment. Receipts, sales contracts or gift documents are examples of documents that might be good to have in such circumstances. Property contained in a home is often owned by the spouses jointly. It is then sufficient – when attachment is sought in relation to the property of one of the spouses – that one or both of the spouses show that it is likely that they are joint owners of the property. For example, if they can produce an invoice where both of the spouses have been included as purchasers, only the share of the indebted spouse in the property is attached.

Under former rules, the spouses could prepare an inventory of what belonged to each of them in their joint home. If a dispute subsequently arose concerning right of ownership, the inventory could in principle be applied, subject to certain preconditions, except when it could be assumed that it was incorrect. There are no such corresponding provisions in the new Act, but an inventory may, of course, nevertheless have some value as evidence of what each spouse owns.

2.7.3 The situation during the marriage

During the marriage, each spouse controls his or her own property. Thus, in principle, one spouse has no right to decide about the other spouse's assets. However, to protect other members of the family, there are certain limitations on a spouse's ability to control his or her property.

These limitations mean that certain measures may not be taken without the consent of the other spouse. One spouse may not, without the consent of the other spouse, sell, give away, mortgage or rent out the spouses' joint dwelling and household goods, even if the first-mentioned spouse is the sole owner of the property. This applies irrespective of whether the dwelling is a separate land unit, a tenant-owner apartment or a rented apartment.

Exceptions are only made for such property as is separate under the conditions of a gift or will. Property of that kind may thus be sold, etc. without the consent of the other spouse. Property that is separate under a marital property agreement and property that has been substituted for property that was obtained for example by gift, is subject to the requirement of consent.

Thus, consent of the other spouse is needed in the first instance in relation to the joint dwelling. Nor may other land units be sold etc. without consent if they are marital property.

Consent is not required if the other spouse is incapable of providing a valid consent, for example as a result of illness. Also, if a spouse refuses to agree to a particular measure without good cause, the district court may grant permission for the measure.

2.7.4 The situation when a marriage is dissolved

A marriage can be dissolved in two ways: by the death of one of the spouses and by a judgment of divorce. In both cases, a division of property between the spouses should be conducted. If one of the spouses has died, it is his or her heirs who shall conduct the division of property with the surviving spouse.

Spouses can also divide property while the marriage continues, provided that they are in agreement about how the division of property shall be implemented. A division of property of this nature corresponds partially to the former institution of judicial separation which no longer exists in Swedish law.

As a main rule, it is the spouses' marital property (see above) that should be divided through a division of property. The spouses may agree that property which they have made separate property by a marital property agreement should also be included. In that case, the separate property is dealt with in precisely the same way as marital property. However, the spouses cannot include property that is separate as a result of conditions for a gift or in a will.

Thus, the main rule is that the marital property shall be included in the division of property. However, there are several exceptions to the main rule.

Firstly, every spouse may take out as much of his or her marital property as corresponds to that spouse's debts. (However, some debts should in the first instance be deducted against separate property that the spouse may have.) Furthermore, every spouse (or, in the event of death, the surviving spouse) may exclude clothes and other property used exclusively for that spouse's personal use, as well as personal presents.

For example, pension entitlements from employers or from the State, and also to some extent private pension insurance, also fall outside the scope of the division of property. However, in the case of division of property owing to divorce, the main rule is that a pension right under private pension insurance or a pension under a pension earnings agreement under the Individual Pension Savings Act shall be included in the division.

There are some further exceptions which do not apply very often.

However, there are also rules requiring that a supplement be made to the marital property that is included in the division of property. If, during the three years immediately preceding the divorce, one spouse has substantially reduced his or her marital property, for example by giving away property or by taking out a pension insurance on his or her own behalf, that spouse's marital property shall be computed as if the property used had still existed.

Whatever remains of the marital property after deduction of debts, etc. shall, in principle, be divided equally between the spouses. If, for example, the wife has SEK 100 000 and the husband SEK 50 000, the portion of each of them is $(100\ 000 + 50\ 000 : 2 =)$ SEK 75 000. Hence the wife should hand over SEK 25 000 to the husband. However, there are some exceptions to this fifty-fifty split rule too.

If the division of property is conducted as a result of divorce, the spouse who has the most marital property may retain more of his or her property if a fifty-fifty split would be unreasonable. When assessing this, regard should in the first instance be paid to the length of the marriage but account should also be taken of the spouses' financial situation and the circumstances generally. In certain cases, the adjustment can go so far as to result in each spouse retaining his or her property completely.

If the division of property is conducted as a result of the death of one of the spouses, the surviving spouse may decide that the division of property should be conducted so that each party retains his or her own property. The spouse can also decide that each party should retain, for example, a quarter of his or her property and the rest be divided in accordance with the fifty-fifty split rule.

In the event of a spouse's death, a special rule known as the base amount rule also applies for the benefit of the surviving spouse. The base amount rule was previously a division of marital property rule but is now an inheritance rule. It is therefore discussed in Section 7.6.2 below.

2.7.5 The joint dwelling and household goods of the spouses

In the event of a division of property, the spouses' joint dwelling and household goods should be allocated to the spouse who has the greatest need of the property, provided this is deemed reasonable having regard

to the circumstances generally. This applies even if the property is owned completely by the other spouse. However, this right to take over property does not comprise property that is separate by virtue of conditions for a gift or in a will. If such property is exchanged for new property, however, the new property is subject to the right to be taken over.

If the value of the property that should be distributed to one spouse in this way exceeds that party's share of the division of property, the spouse is nevertheless entitled to have the property, provided he or she pays the difference to the other spouse or his or her heirs. There are some opportunities for obtaining respite for payment.

2.7.6 Gifts between spouses

Under former rules, gifts between spouses would normally be implemented by a marital property agreement. Nowadays, however, marital property agreements may not be used for gifts between spouses. Instead, the rule is that a gift that one spouse gives the other spouse is binding between the spouses in accordance with the same rules as apply for persons other than spouses. However, in order that such gift have effect in relation to the donor's creditors, it is required that the gift is registered with a district court. Registration is not required as regards personal presents that are not disproportionate to the financial situation of the donor.

2.8 Divorce

Spouses who are agreed on divorcing may obtain a divorce immediately. However, a divorce must be preceded by a period of at least six months for reconsideration if either of the spouses permanently lives together with his or her own child under the age of 16 who is in the custody of that spouse. Even if the spouses do not have any children, they are entitled to have a period for reconsideration if they so request.

If only one of the spouses wishes to divorce, he or she is entitled to divorce after a six-month period for reconsideration.

The period for reconsideration is computed from the date when the court received the spouses' joint application or, if it is only one of the spouses who wishes to divorce, when his or her application for divorce was served on the other spouse.

In those cases where a period for reconsideration is required, one of the spouses must make a special application for divorce after the period for reconsideration has run for six months. If such an application is not presented within one year of the commencement of the period for reconsideration, there will be no divorce, and the court will dismiss the case.

During the period for reconsideration, the spouses do not need to live in different places. On the request of either of the spouses, the court can provisionally decide on interim maintenance obligations during the period for reconsideration and determine which of the spouses should be allowed to go on living in the home until such time as a division of property has taken place. The court can also prohibit the spouses from visiting each other.

If either of the spouses so wishes, the court shall also issue an interim decision on who should have custody of the children during the period for reconsideration. Normally, however, the children remain under the custody of both parents during the period for reconsideration. No special decision on the custody issue needs to be requested for this. The court may further decide on the child's residence, contacts and contributions to the child's maintenance during the period for reconsideration. The court shall always ensure what is in the best interests of the child. No separate custody decision is required if the parents agree that they shall exercise legal custody (known as joint custody) together even after the divorce. It is important that parents who are about to divorce consider carefully how custody of the children is to be arranged after the divorce. If either of the parents considers that it is not possible to continue with joint custody after the divorce, she or he must request the court to dissolve the joint custody; otherwise the parents continue to have joint custody (see further Section 5.3.2).

If the spouses change their minds during the period for reconsideration and no longer wish to divorce, they can jointly withdraw their action. The court will then dismiss the case entirely. This means that any interim decisions concerning, for example, custody, maintenance and the right to remain resident in the dwelling thereby lapse.

In some cases, each of the spouses is entitled to a divorce without a period for reconsideration, even if they are not in agreement about the divorce and even if there are children under the age of 16 who are still in the custody of one spouse. The most important example of this is where the spouses have already lived apart for at least two years.

A spouse who wishes to divorce is entitled to have a divorce without having to give the court any reason for his or her application. The Code does not contain any rules about the court having to consider the spouses' personal relationship with each other.

After a divorce, a divorced spouse retains the surname that he or she had during the marriage. However, the divorcee is entitled, by giving notice to the Tax Agency, to revert to the surname that he or she had immediately before the marriage.

Dissolving a marriage is a big step, particularly if there are children in the family. Spouses who have problems in their marriage can obtain assistance in various ways to resolve their problems, for example from the family advice

service (see Section 8). Even if the marriage cannot continue, contacts with the family advice service may, on many occasions, ease the effects of the pending separation and help those spouses who have children to alleviate the separation for the children and assist them in working together for the best interests of the children.

The National Board of Health and Welfare in consultation with the National Courts Administration has issued a brochure entitled “Divorcing when one has children”. It deals with a number of legal and practical issues that usually arise in connection with divorce. Furthermore, problems of a more personal nature are reviewed. The brochure is available on the National Board of Health and Welfare website, www.socialstyrelsen.se.

2.9 International aspects

In the case of relationships with international connections (by reason of foreign citizenship or permanent residence abroad), special rules apply. There is an ordinance from 1931 applicable to relationships between Nordic citizens. Regarding other international relationships, there is an Act from 1904 concerning the entry into and dissolution of marriage, etc. and an Act from 1990 concerning spouses’ marital property regime, and also the so-called Brussels II Regulation (Council Regulation (EC) no 2201/2003) concerning issues relating to the jurisdiction of courts and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility.

3

Cohabitees

3.1 Introduction

The Cohabitees Act aims to provide a minimum protection for the weaker party when a cohabitee relationship ends. The Cohabitees Act contains rules on dividing the joint dwelling and household goods of cohabitees, concerning the right of a cohabitee to take over a dwelling that is not included in the division and concerning restrictions on the right to dispose of the joint home. There are also rules in the Tenancies Act, which in all material respects equate cohabitees with spouses and registered partners. Furthermore, there are a number of provisions in, for example, tax legislation and within social welfare insurance that equate cohabitees with spouses /registered partners, particularly when the cohabitees have or have had children together.

But it would, nevertheless, be incorrect to suggest that the same rules apply to cohabitees as to spouses/registered partners. There are major and important differences, above all regarding the relationship between the parties themselves. As an example, it may be mentioned that cohabitees do not have any obligation to maintain each other, even after a very long-lasting relationship. The right to a division of property only comprises the joint dwelling and household goods. For example, bank funds, cars and summer cottages fall outside the scope of the division of property and are retained on separation by the cohabitee who owns the property. Nor do cohabitees have any right to inherit from each other unless they have made testamentary provisions to this effect.

3.2 Dwelling and household goods

3.2.1 The scope of the Cohabitees Act

Cohabitees means two persons who

- Permanently live together. Permanently means that it should involve more than a short association.
- Live together as a couple, that is to say, a relationship where a joint sexual life normally forms part.
- Have a joint household, which means chores and expenses are shared.

It is irrelevant whether the cohabitees are of the opposite sex or the same

sex. A relationship is not subject to the Cohabitees Act if either of the parties is married or a registered partner with someone else or where, for example, two adult siblings live together.

The Act only applies to the cohabitees' joint dwelling and household goods. It applies to all kinds of permanent dwellings (houses, apartments) and the equipment that normally belongs to the home. However, the Act does not, for example, apply to leisure cottages or equipment in such dwellings. Since the Act only applies to dwelling and household goods, the rules do not cover other property such as, for example, bank balances, shares, cars and boats. Such assets fall outside the scope of the division and the cohabitee who owns the property retains it after a separation.

3.2.2 The situation during the cohabitee relationship

The main rule is that, during the cohabitee relationship, each cohabitee takes care of his or her own property and is responsible for his or her own debts. However, as in the case of married couples and registered partners, there are certain restrictions on the powers of a cohabitee to dispose of his or her property. The rules are rather similar to those applicable to marriage/partnership and *inter alia* mean that a cohabitee cannot, without the consent of the other cohabitee, sell, give away, mortgage a dwelling or pledge household goods that may be subject to a future division of property or which the other cohabitee may be entitled to take over (see below).

If the cohabitees live at a real property, of which one of the cohabitees is the registered owner or holds a lease, they may by notification to the property registration authority (the district court) have it recorded that the property is the joint dwelling for them both. Such a record may provide security restricting the cohabitee who owns the property from selling or mortgaging it without the other cohabitee's knowledge. The notification shall be in writing and signed by both cohabitees. It does not need to be witnessed.

3.2.3 The situation when a cohabitee relationship ends

A cohabitee relationship ends if the cohabitees or either of them enters into marriage or registered partnership, if the cohabitees move apart or if either of the cohabitees dies. A cohabitee relationship is also deemed to have ended if a cohabitee applies to the district court to appoint an estate administrator or for a right to remain resident in the joint dwelling until a division of property has been effected, or if a cohabitee institutes proceedings to be allowed to take over a joint dwelling that is not included in the division.

When a cohabitee relationship ends, a division of property shall be conducted if either of the cohabitees so requests. A request must be made no later than one year after the cohabitee relationship has ended. If the cohabitee relationship ends with the death of one of the cohabitees or if a cohabitee

dies within one year of when the cohabitee relationship ended, the request must be presented no later than when the estate inventory is drawn up. If the cohabitee relationship ends through the death of one of the cohabitees, it is only the surviving cohabitee who may request a division of property. Thus the heirs of the deceased cohabitee are not entitled to request a division of property. If no one requests a division of property, each of the parties retains his or her own property.

The joint dwelling and household goods of the cohabitees are included in the division of property provided the property has been acquired for joint use. Who paid for the property is irrelevant. Other property cannot be drawn into the division of property. The rules on division of property contained in the Cohabitees Act do not apply if one of the parties has moved into the other's dwelling even though the couple shared the mortgage payments and other costs. But if such a dwelling has been sold and the money used for a new joint dwelling, the new dwelling shall be included in the division of property.

Before the division of property, debts are deducted in a similar way as applies to a division of property between spouses/registered partners. In the first instance, only such debts as relate to property included in the division of property should be deducted, for example registered mortgage debts and repayment debts on furniture.

What then remains shall, in principle, be divided equally between the cohabitees. If one of the cohabitees needs the dwelling and the household goods more than the other cohabitee, he or she can take over the entire home. However, a precondition for this is that it is also reasonable that he or she take over having regard to the other circumstances. If the other cohabitee does not receive other property from the joint home of the same value, the cohabitee who takes over the dwelling or household goods shall pay a corresponding amount in money.

In the case of cohabitees also, there are exceptions to the fifty-fifty split rule. As in the case of spouses/registered partners, the cohabitee who owns most of the property may retain more of his or her property if the fifty-fifty split rule would lead to an unreasonable result. When making the assessment, regard should be paid in the first instance to how long the cohabitee relationship has lasted, but also to the financial situation of the cohabitees and the circumstances generally. In some cases, an adjustment may go as far as each party quite simply retaining his or her property.

Another exception to the fifty-fifty split rule is what is termed the little base amount rule which only applies in the event of the death of one of the cohabitees. From the property which, after the deduction of debts, is included in the division of property, the surviving cohabitee should always – if the property is sufficient – receive as much as corresponds to two price base amounts under the National Insurance Act (SEK 80 600 in 2007). This

rule partially corresponds to the base amount rule applicable in the case of death for the benefit of a surviving spouse (see Section 7.6.2)

If a dwelling that is held in the form of a tenant-owner right (condominium) or a tenancy right has not been acquired for joint use, but is nevertheless used jointly, this property is actually not included in the division of property. However, provided it is reasonable, the cohabitee who is most in need of the dwelling may take it over from the other cohabitee. If the cohabitees do not have children together, extraordinary reasons are then necessary to be allowed to take over the dwelling. If one of the cohabitees has died, it is only the surviving cohabitee who has the right to take the property over, that is to say not the heirs of the deceased cohabitee. The cohabitee who takes over a dwelling from the other cohabitee shall pay full compensation for the value of the dwelling. In certain circumstances, respite for payment may be granted. It should be noted that this special right to take over does not comprise household goods that are not included in the division of property.

No later than one year from the date when a cohabitee relationship has ended, the cohabitee who wishes to take over a rental or tenant-owner property must present a claim to do so. However, if the cohabitee leaves the dwelling, the claim must be presented no later than three months thereafter. The time limit of one year does not apply if the cohabitee who owns the dwelling dies and the surviving cohabitee remains resident in the dwelling.

Cohabitees can, by written contract, agree that a division of property should not take place or that certain property shall not be included in a division. The contract shall be in writing and signed by both of the cohabitees. It should not be registered and does not need to be witnessed. It is not possible, however, to eliminate by contract the right of one cohabitee to be allowed, in certain cases, to take over the other cohabitee's dwelling for payment.

A joint dwelling and joint household goods which one of the cohabitees has received as a gift, through a will or inheritance, with the condition that the property should be separate, is never included in a division of property.

3.3 Children

In contrast to what applies as regards a child born of parents who are married to each other, the paternity of a child whose parents are unmarried must be determined in accordance with a special system (see Section 5.1). This also applies when the unmarried parents are cohabitees.

A child of unmarried parents is in the sole custody of the mother, also when the parents are cohabitees. However, the parents may, by joint application to the Tax Agency or the social welfare committee in conjunction with acknowledgement of paternity or acknowledgement of parenthood for the woman, obtain joint custody by registration (see also Section 5.3.3).

4

Registered partnership

4.1 Introduction

Two persons of the same sex are entitled to register their partnership. Registration is primarily intended for homosexual couples, but there is no requirement for such a sexual disposition. Two persons who wish to register their partnership do not need to live together or have a common household.

The majority of the provisions applicable to those who have entered into marriage, which were described in Chapter 2, also apply to registered partners. This may be seen in Sections 4.2 – 4.7. Lastly, international aspects are dealt with in Section 4.8

4.2 Impediments to registration

A partnership may be registered between two persons of the same sex. However, in certain cases, a registered partnership is not desirable from the point of view of society. There are therefore rules concerning impediments to registration.

A person who is under 18 years of age is not considered to have the maturity required to be capable of deciding independently about problems of a personal or financial nature that arise when living together with someone on a permanent basis. It is therefore prescribed that only those who are aged 18 or over may register their partnership.

Persons who are related to each other in the direct ascending or descending line, for example father and son, may not register a partnership. Nor may full brothers or full sisters register a partnership. However, half-brothers or half-sisters may, following application, obtain permission from the county administrative board to register their partnership. Nor may persons who, in an adoptive relationship are related to each other in the direct ascending or descending line, register a partnership. However, two adoptive siblings or an adopted child and the natural child of the adoptive parents may, on application, obtain permission from the county administrative board to register their partnership.

A person who is already a registered partner or who is married may not register a new partnership while such registered partnership or marriage subsists.

The partnership may be registered in Sweden if one of the partners has been resident here for at least two years. It is not necessary that the residence should have lasted for two years if one of the partners is a citizen of Sweden, Denmark, Iceland, the Netherlands or Norway.

4.3 Inquiry into impediments to registration

Before a partnership may be registered, impediments to registration shall be considered. This inquiry shall be conducted by the Tax Agency. The partners shall make a joint request for an inquiry into impediments to the Tax Agency or social insurance office.

In conjunction with the inquiry, the parties shall provide a written assurance that there are no impediments to registration.

If the Tax Agency concludes that there are no impediments to registration, the parties may obtain a certificate confirming this on request. The inquiry into impediments to registration is valid for the following four months.

4.4 Registration

Registration is performed by a judge or by a person appointed by the county administrative board to perform registrations. The ceremony resembles a civil marriage. The registration is conducted in accordance with one of two forms with different wording. One has a more solemn form while the other contains only the fundamental elements for registration. The partners may choose which form of registration shall be used.

Those who wish to have further information may contact the municipal office or the district court in the district where registration is to be performed.

4.5 Adoption and specially appointed custodians

Couples that have entered into a registered partnership may be considered as adoptive parents in the same way as married couples. Two partners can jointly adopt a child and one partner can adopt the other partner's child – whether biological or previously adopted. The same consideration regarding requirements for individual suitability apply for registered partners as for spouses who wish to adopt. The starting point for the consideration is the capacity of the applicants to offer favourable conditions for childhood and adolescence. A basic precondition for adoption is, of course, that the adoption is in the individual case beneficial for the child and that the other

requirements of the Act are satisfied. As regards international adoptions, the restrictions and conditions imposed by the child's country of origin apply.

Registered partners and homosexual cohabitantes may be appointed as specially appointed custodians, to jointly exercise custody of a child. Normally a child is in the custody of both parents or one of them. However, in certain cases a specially appointed custodian may be appointed, for example if the child's custodian fails to take care of the child. Someone who is suitable to provide a child with care, security and a good upbringing shall be appointed as a specially appointed custodian.

4.6 Assisted conception

Assisted conception treatment with donated sperm may be provided in the Swedish public health service for a woman who is a registered partner or is cohabiting with another woman. Assisted conception can be carried out in the form of insemination or in the form of conception outside the body. As in the case of heterosexual couples, written consent is required from the woman's partner or cohabitee for the treatment to be carried out. Furthermore, a doctor shall examine whether, with regard to the couple's medical, psychological and social circumstances, it is advisable that the treatment take place. The treatment may only be performed if it may be assumed that the child will grow up under good conditions.

4.7 Name, maintenance, finances, dissolution, inheritance

The provisions pertaining to the surname of the partner, the maintenance obligations between the partners, the assets and debts of the partners and also the dissolution of a registered partnership are the same as those applicable to spouses in a marriage. These provisions are dealt with in Sections 2.5 – 2.8.

Partners also inherit from each other in the same manner as spouses (see Sections 7.1, 7.3 and 7.6.2).

4.8 International aspects

It is stated in Section 4.2 that registration is allowed in Sweden if one of the parties has been resident here for at least two years. It is not necessary that residence lasted for two years if one of the parties is a citizen of Sweden, Denmark, Iceland, the Netherlands and Norway. The right to register a partnership is always considered in accordance with Swedish law. Thus, the impediments to registration mentioned in Section 4.2 also apply if one of the partners is a foreign citizen.

In contrast to a marriage, a partnership that is registered in Sweden is not normally expected to have any legal effects or only limited legal effects in other states, unless there are corresponding rules on partnership there. Provisions corresponding to the Swedish provisions on registered partnership exist in, for example, Denmark, Finland, the Federal Republic of Germany, Iceland, the Netherlands and Norway. However, one cannot exclude the possibility that authorities and courts in a country where there are no corresponding provisions may, in an individual matter, take the legal effects of a registered partnership into account, at least to the extent that there are no opposing interests claimed. It is of great importance for partners who move abroad or who have property there to find out what position is adopted in other countries as regards the treatment of registered partnerships. It is also important for the partners to be aware of the risk of a registered partnership being ignored abroad. It is, namely, possible by agreement, will and other legal measures to reduce to some extent the inconvenience resulting from a partnership not being recognised. It may be appropriate in the situations mentioned for the partners to take legal advice.

5

Parents and children

5.1 Paternity

5.1.1 The basic rules on paternity

The Code comprehensively regulates who is to be regarded as the father of a child. In certain cases, it is stated directly in the Code who is to be regarded as the father, while in other situations it is required that paternity be established by what is known as a paternity acknowledgement or by a judgment. Certain differences apply depending on whether or not the child's mother is married when the child is born.

If the child's mother is married when the child is born, her husband is automatically deemed to be the father of the child. This also applies if the mother is a widow and the child is born so soon after the death of her husband that it may have been conceived before his death. However, it is considered that a man who is divorced from the mother of a child when the child is born, is not automatically the father, even if the child is born shortly after the divorce. Instead, paternity must then be determined by an acknowledgement or by a judgment. (However, for children born before 1977, the rule is that also in this situation the husband should automatically be considered to be the father).

It should be noted that spouses are still married to each other during the period for reconsideration that in some cases shall precede a divorce (see Section 2.8). The man in the marriage is hence also deemed to be the father of a child who is born during the period for reconsideration, even if, for example, the mother then lives together with another man.

In a case where the mother's spouse shall be regarded as the father of a child, but there are reasons to assume that it is another man who is really the father of the child, both the lawful husband and the child have an opportunity to apply to a court in order to have the paternity issue determined judicially. If it is clear to all the parties involved that it is a man other than the mother's husband who is the father of the child, the paternity of the lawful husband may be revoked without having to go to court. It is then sufficient that the man who really is the father of the child acknowledges paternity and that this acknowledgement is approved in writing both by

the mother and by her husband. Regarding the requirements for the acknowledgement itself, see Section 5.1.2.

If the child's mother is not married when the child is born or if the paternity of the lawful husband is revoked, paternity must be specially determined by an acknowledgement or by a judgment. The social welfare committee has an important function in this connection.

The committee shall endeavour to establish who is the father of the child and give him an opportunity to acknowledge paternity.

5.1.2 Acknowledgement of paternity

Acknowledgement of paternity is made in writing. Two persons shall witness the document. The acknowledgement shall be approved by the mother of the child and by the social welfare committee. If the child has attained majority (18 years), the acknowledgement shall instead be approved by the child himself or herself. The social welfare committee may approve the acknowledgement only if it can be assumed that the person who has acknowledged paternity is the father of the child. In order to be able to assess the issue, the committee must, of course, obtain certain information from the mother and the father named about their relationship at the time the child was conceived. This may sometimes be felt to be an unauthorised intrusion into the private lives of those concerned. However, it is important that the acknowledgement is correct, particularly for the child.

5.1.3 Consideration by a court

If the investigation of the social welfare committee does not clearly identify one of several potential men as the father, it may be necessary to have the matter considered by a court. This also applies if the man who the committee considers is the father does not want to acknowledge paternity. In order to determine paternity, a court action shall be conducted on behalf of the child against the man or those men who can come into question. If the child has attained full legal age, he or she conducts the cause him or herself. Otherwise, the child's action is normally conducted by the mother or by the social welfare committee.

The court shall declare a man to be the father of the child if a genetic examination has shown that he is the father of the child. Furthermore, the court shall declare a man to be the father if it has been established that he had sexual intercourse with the mother of the child or an insemination or fertilisation outside the mother's body took place with his sperm at a time when the child may have been conceived and, having regard to all the circumstances, it is probable that he is the father of the child.

However, paternity cannot be determined by a judgment for a man who has donated sperm in the Swedish public health service.

See Section 5.1.1 regarding consideration by the court of a paternity issue where the mother was married when the child was born.

5.1.4 DNA analysis

When paternity is to be determined, there is often reason to carry out a DNA analysis on the mother, the child and the man or those men who may come into question as the father of the child.

By means of the investigation, it is possible to exclude incorrectly identified fathers to a very great extent.

A person who does not voluntarily participate in an investigation that a court has decided on, risks being collected by the police.

5.1.5 Compensation for maintenance allowance paid

A man who has paid maintenance allowance to a child and who is later found not to be the father can obtain compensation from the State for the allowances paid, provided that he and the child did not live together when the maintenance allowances were paid. The county administrative board, which considers the question of entitlement to compensation, can provide further information on this.

5.1.6 Paternity by assisted fertilisation

Activities involving assisted fertilisation are regulated by law. The provisions mean that insemination and in vitro fertilisation (fertilisation outside the body) may be performed on women who are married or cohabiting with a man, provided that the man has given his consent to the fertilisation. An insemination may be carried out with sperm either from the woman's husband or cohabitee or from another donor, sperm donation. In the case of fertilisation outside the body, the egg that is fertilised may be the woman's own or come from another woman, egg donation. If the egg is the woman's own it may be fertilised by the sperm of a man who is an outsider. Consequently, both the egg and sperm cannot come from outsiders.

The man who has consented to assisted fertilisation shall be deemed to be the father if, having regard to all the circumstances, it is probable that the child was conceived by fertilisation. However, if the woman is not married when the child is born, paternity must be established by an acknowledgement or a judgment. In the case of egg donation, the woman who gives birth to the child is deemed to be the mother of the child.

A person who has been conceived through assisted fertilisation with sperm or egg donation is entitled, provided he or she has attained sufficient maturity, to gain access to information about the donor recorded in the hospital journals. If anyone has cause to believe that he or she has been conceived by donation, the social welfare committee is under obligation to help in establishing whether there is any such information.

5.1.7 Parenthood for partners and cohabittees of the same sex
Assisted fertilisation may also be performed in the Swedish health service on a woman who is a registered partner or cohabitee with another woman (cf Section 4.6). The partner or cohabitee – together with the woman who has undergone fertilisation – is deemed to be the parent of the child that is born. This presupposes that she has given consent to the fertilisation and that it is probable the child was thereby conceived. Parenthood is established by an acknowledgement. The acknowledgement shall be in writing and witnessed by two people and also approved by the mother and the social welfare committee. If parenthood is not acknowledged voluntarily, it may be established by a judgment.

The parenthood rules do not apply to children who have been conceived by assisted fertilisation outside the Swedish health service, for example by insemination arranged privately or abroad. Instead, paternity shall be determined in such cases. If it is beneficial to the child and the other preconditions exist, joint parenthood may be attained through adoption.

The same rules apply to a woman deemed to be a parent after an acknowledgement or a judgment as for other parents, regarding, for example, custody of the child, maintenance, inheritance, name and parental benefits.

5.1.8 International aspects

What is stated above concerning paternity and parenthood for a woman applies in the first instance to children of Swedish parents born in Sweden. Special rules apply regarding international relationships. There is an Act from 1979 concerning Nordic relationships and an Act from 1985 on other international relationships.

5.2 The name of the child

5.2.1 Forename

The custodian of the child (see Section 5.3.2) shall give notice of the child's forename to the Swedish Tax Agency within three months of the birth of the child. The notification should be made in writing. If the child is christened in the Church of Sweden, the notification can be made to the person officiating at the christening ceremony. The Tax Agency shall approve the forename. The name must be suitable as a forename.

5.2.2 Surname

If the child's parents have a common surname when the child is born, the child automatically takes the parents' name.

If the parents have different surnames when the child is born, different rules apply depending on whether or not the parents have previously

had children together. If a new-born child has older full brothers or sisters who are in the joint custody of the parents, the new-born child takes the surname that the most recently born brother or sister bears. In other cases, the parents may choose the surname of the child. They can choose a name which either of them bears. They can also give notice of a name that either of the parents bore immediately before marriage. The Tax Agency must be notified in writing of the choice of name within three months of the birth of the child. If notice is not given within this period, the child is considered to have acquired at birth the name of the mother.

Adoptive children take upon adoption the adoptive parents' or one of the parent's surname largely in accordance with the same rules as apply to new-born children. However, notification of the child's surname is made in the adoption matter at the court. The court may also decide that an adoptive child shall retain the surname the child had prior to the adoption.

A foster child may, under certain circumstances, change its surname to a name that one of the foster parents bears. For such a change of name it is required that the court has found a change of name is compatible with the best interests of the child.

5.2.3 Middle name

If the child has received a surname that only one of the parents bears, the child can take the surname of the other parent as a middle name. If this parent has acquired his or her name by marriage with someone other than the child's other parent, it is required that the spouse in that marriage gives consent.

The middle name is purely personal and marks the kinship with a parent. The name cannot be passed on to a spouse or child.

5.2.4 Other information

A person who wishes to change his or her name may contact the Swedish Tax Agency or in certain cases the Patent and Registration Office, Personal Names Department, Box 530 826 27 Söderhamn. Information tel. 08-450 20 54 (weekdays 09.00-15.00).

5.3 Custody

5.3.1 Legal custody – actual care

All children under 18 years of age shall – except if they have married – be in the custody of one or two adults. Custody of children involves certain obligations, for example, to ensure that the child has its need for care, security and a good upbringing satisfied. It is usually the child's parents or one of them who, in the capacity of custodian, fulfils these duties.

Custody is accompanied by rights and obligations to decide in matters concerning the child's personal affairs, for example the upbringing and education of the child. In pace with the increasing age and development of the child, the custodian shall pay greater regard to the child's own views and wishes.

When the Code refers to custody, it means the legal responsibility that a custodian has. In most cases the person with legal custody is also responsible for the actual care, that is to say the custodian him or herself looks after the child and lives together with it. However, it is not always the case that a custodian lives permanently together with the child. The legal nature of custody is perhaps most clearly expressed in those cases where parents have joint custody but do not live together. Usually, only one of the parents then has the immediate supervision of the child. Thus, joint custody does not mean that the child shall live an equal length of time with each of the parents.

Thus, joint custody involves a joint legal custody obligation. Parents shall decide jointly on matters concerning the child. However, if one of the parents is prevented from participating in the decision, the other may decide alone, if the decision cannot be postponed. But he or she cannot make a decision alone if the decision is of major importance for the future of the child (unless the best interests of the child manifestly require such a decision.)

The custodian has a responsibility to ensure the child does not come to harm. Under an express statutory provision, a child must not be exposed to physical punishment or other humiliating treatment, corporal punishment is in other words prohibited.

5.3.2 Custodian

If the child's parents are married to each other when the child is born, the parents automatically have joint custody of the child. If the parents only marry later, they automatically obtain joint custody by virtue of the marriage.

If the parents divorce, joint custody continues to apply without the court having to make any decision to this effect in connection with the divorce. This applies provided that neither of the parents has requested that the joint custody should be dissolved and, furthermore, that it is not obviously incompatible with the best interests of the child that joint custody continues.

If the parents of a child are not married to each other when the child is born, the child is in the custody of the mother.

5.3.3 Alteration of custody

If the parents agree to implement an alteration of custody, they can apply to the court for joint custody or, alternatively, apply for one of them to have sole custody. They can also resolve the custody issue by an agreement. However, the social welfare committee must approve the agreement, which must be in writing and signed by both parents in order to be legally binding. The social welfare committee shall approve the agreement if what is agreed is in the best interests of the child or – when the agreement is aimed at providing for joint custody – it is not manifestly incompatible with the best interests of the child.

Parents who wish for help in concluding an agreement may apply to the municipality which is under an obligation to offer such assistance.

Unmarried parents can obtain joint custody also by giving joint notice to the social welfare committee in conjunction with the committee's approving an acknowledgement of paternity or an acknowledgement of parenthood for a woman. The parents can also obtain joint custody by joint notification to the Swedish Tax Agency. The notification to the social welfare committee or to the Swedish Tax Agency may be given by unmarried parents regardless of whether they are cohabiting or living apart. A condition for the parents to be able to obtain joint custody by notification to the Tax Agency is that no decision on custody has previously been made. Furthermore, both of the parents and the child must be Swedish citizens. If these conditions are not satisfied or if the parents do not wish to take advantage of the opportunity to give notice to the Swedish Tax Agency, they can apply to the court to obtain joint custody.

If only one of the parents wishes to implement an alteration of custody, that parent may institute court proceedings. The court shall base its decision on what is in the best interests of the child. In this assessment, special attention should be attached to the risk that the child or someone else in the family might be exposed to attacks or that the child might be unlawfully abducted or retained or otherwise come to harm. Furthermore, special attention should be attached to the child's need of close and good contact with both parents. Regard should also be given to the wishes of the child, taking into consideration the age and maturity of the child.

The court can decide on joint custody or refuse to dissolve joint custody, even if a parent opposes joint custody. However, a precondition for a court to be able to rule against the wishes of one of the parents is that joint custody is in the best interests of the child. The court may never decide on joint custody if both parents oppose this. In the assessment of whether or not custody should be joint or awarded to one of the parents, the court should give special attention to the parents' ability to cooperate in matters concerning the child. Joint custody usually presupposes that the parents

cooperate in matters concerning the child in a manner reasonably free of conflict. This does not mean that the parents must always be of the same view but they must be able to deal with differing opinions in a manner that does not have a negative effect on the child.

If both parents have custody of the child and one of them dies, the surviving parent automatically has sole custody. If only one of the parents is the custodian and that parent dies, the court shall, on the application of the other parent or on the application of the social welfare committee, appoint that parent as custodian or, if it is more appropriate, award custody to one or two specially appointed custodians.

Custody issues are dealt with by the district court in the district where the child is resident. Custody issues may always be raised in divorce proceedings.

5.3.4 A person other than a parent as custodian

In special circumstances the custody of a child can be transferred from the child's parents or one of them to someone who is not a parent.

Transfer of custody may be appropriate if a parent, in the exercise of custody, is guilty of abuse or neglect or otherwise fails to take care of the child in a way that involves a permanent risk for the child's health or development. The issue of taking custody away from a parent for one of these reasons may be considered by a court, without any special application, in a divorce case or in a custody case instituted by one or both of the parents. The issue may also arise on the initiative of the social welfare committee.

Custody of a child may in exceptional cases be transferred to a person other than a parent, even if the parents cannot be accused of inadequate care of the child. This applies in cases where the child has permanently been cared for and brought up in a family home and it is obviously in the best interests of the child that the prevailing circumstances should continue. Custody may then be transferred to one or both of the parents in the family home.

5.3.5 The child's residence

If the parents have joint custody of the child, the court can decide on the residence of the child. The decision may mean that the child should live with only one of the parents or the child should live alternately with both parents. The decisive factor for the position adopted by the court is what is in the best interests of the child.

If the parents are in agreement, they can make an agreement concerning the residence of the child. For such an agreement to be legally binding it is required that it is in writing, signed by both parents and has been approved by the social welfare committee. The social welfare committee

shall approve the agreement if what is agreed by the parents is in the best interests of the child.

5.3.6 Contact

The child is entitled to maintain contact with the parent with whom he or she does not live. This contact is in the first instance for the benefit of the child. It is the child's interests and needs that shall be decisive. The starting point is that it is important for the child to have contact with both parents even if they do not live together. Both parents, including the parent who does not live with the child, have a responsibility to ensure the child's need of contact is satisfied.

The court can decide on contact. This also applies in those cases where the parents have joint custody. The decisive factor for the decision of the court is what is in the best interests of the child. There is nothing to prevent contact being decided at the same time as the court decides on custody of the child. The court may in exceptional cases decide that contact shall take place in some other form than meetings with the parent, for example contact by telephone or letter. This type of contact may be appropriate in situations where usual forms of contact cannot be arranged to any extent. This may be the case if the parents live a long distance from each other or if the parents' freedom of movement is restricted, for example due to long stays in hospital. Another example is if the child and the parent have not had any contact whatsoever for a long time or only very little contact. During an initial period, contact by telephone, for example, may appear best for the child.

If the parents agree, they can make an arrangement concerning contact. In order that the agreement be legally binding, it is required that it is in writing, signed by both parents and that it has been approved by the social welfare committee. The social welfare committee shall approve the agreement if what the parents have agreed on is in the best interests of the child.

If the parent with whom the child shall have contact is resident in a different district from that of the child, exercising contact normally involves special expenses. The parent with whom the child lives shall help to pay the travel expenses that may arise in conjunction with the child's meeting the other parent. How much that parent should pay is decided according to what is reasonable having regard, above all, to the financial capacity of the parents.

The issue of contact between a child and persons other than a parent who are particularly close to the child has been regulated by the Code. It may be a question, for example, of contact with a grandparent or a child's previous family home parents. If the custodian opposes the contact requested by someone other than a parent, the social welfare committee can

institute proceedings at a court concerning this contact. In the first instance the committee will endeavour to reach a solution that does not require a decision by a court.

5.3.7 Enforcement of custody decisions, etc.

If a child is with a parent who does not have custody of the child and who for some other reason is not entitled to have the child with him or her, the child's custodian can apply to the district court and request that the child be handed over to him or her. It is irrelevant whether the custodian has custody of the child by virtue of a court order or by reason of an agreement concluded between the parents and which has been approved by the social welfare committee or directly by virtue of a statute.

As indicated in Section 5.3.5, a court can decide on the residence of a child in certain cases. It is also possible in such cases to apply to the district court for enforcement. The same applies to an agreement concerning the residence of the child that has been concluded between the parents and approved by the social welfare committee.

The district court can decide various measures. In the first instance, it is normal to have the child handed over on a voluntary basis. If this is not possible, the court may ultimately decide on a default fine or collection. An order for a default fine means that the person who is taking care of the child is liable to pay a stiff fine if he or she does not hand over the child.

Collection is a measure that can only be resorted to in exceptional cases. It means that the child is collected and brought to the custodian through the agency of the police. However, collection may only be decided on if enforcement cannot otherwise be implemented or if collection is necessary to avoid the child suffering serious injury.

Even in those cases where a court has decided on a child's contact with a parent with whom the child does not live, an application for enforcement can be made to the district court. This also applies if there is an agreement that has been approved by the social welfare committee. The main means of compulsion that can be applied in these cases is a default fine. Collection may be decided on only if enforcement cannot be implemented otherwise and the child has a particularly strong need of contact with the parent.

For the sake of the child, certain protective provisions have been included in the Code. Amongst other things, it is prescribed that the district court may not decide on enforcement if the child opposes being handed over and the child has attained such an age and maturity that its wishes should be taken into account. However, even if the child opposes the measure, a decision on enforcement may be made if the court considers that it is necessary having regard to the best interests of the child. Furthermore, enforcement may be refused if it is obvious that it would not be compatible with the

best interests of the child. This is primarily aimed at cases where there is a risk that the child will be harmed if the decision is enforced.

Swedish judgments and decisions in custody cases can generally be enforced in the other Nordic countries. Similarly, judgments and decision from these countries can be enforced in Sweden. Enforcement can be implemented in relation to certain other countries also in accordance with two international conventions and the so-called Brussels II Regulation.

5.4 Guardianship

In the same way as every child should have someone who is responsible for looking after his or her personal needs (a custodian), the child shall also have someone who attends to his or her financial affairs. The child's guardian has this task. Normally, the guardians are the parents or the parent who is the child's custodian. Guardianship continues until the child attains majority at the age of 18.

In principle, all the property of the child is subject to the guardian's administration, it is quite simply the guardian who acts on behalf of the child. Exceptions apply *inter alia* if the child has received property with a condition that the child him or herself should control the property (for example simple gifts that the child understands the meaning of) or that the property should be subject to the special administration of someone other than the guardian.

It is important that the guardian does not confuse the money or securities that belong to the child with his or her own assets. The duties and responsibilities of a guardian do not differ in this respect from those applicable when administering property belonging to someone else in other contexts. The funds of the child shall, to a reasonable extent, be used for the maintenance, education and general benefit of the child. Funds that are not used for such purposes should be placed in a secure manner so that they yield a reasonable return.

All guardians are under the supervision of a chief guardian. There is a chief guardian or chief guardian board in every municipality. The level of influence that the chief guardian has on the individual administration depends on which kind of administration is involved.

If a child has assets worth more than eight base amounts under the National Insurance Act (1962:381) (SEK 322 400 in 2007), administrative measures by parents require the consent of the chief guardian to a greater extent than otherwise. Consent is required, for example, if a parent wants to buy shares on behalf of the child. Furthermore, the parent must declare to the chief guardian what property the child owns and report on the administration once a year.

Most parents (when the child's assets are worth less than eight base amounts) decide themselves to a large extent how they should administer the child's property. However, as regards certain legal transactions, the permission of the chief guardian is always required, for example, to purchase, sell or rent out real property on behalf of the child. Nor, in principle, can a parent put his or her child into debt without the consent of the chief guardian. In certain cases, the child's property may be subject to more stringent supervision by the chief guardian despite the fact that the value of the property is less than eight base amounts. This may be the case if the property is subject to the supervision of a specially appointed guardian. This applies, for example, when the child has received a legacy or a gift with a condition for special chief guardian control. The chief guardian can also decide that more stringent control rules shall apply if this is necessary to secure the administration of the child's property. The more stringent rules apply to specially appointed custodians who are also guardians unless the chief guardian has decided for special reasons on some other arrangement.

An appeal may be lodged against the decision of a chief guardian at a district court, for example in the case of dissatisfaction with the chief guardian for not having given consent to a particular administrative measure.

The chief guardian in the municipality can provide further information about guardian administration.

A special Government Commission – the Guardians, Guardians *ad litem* and Administrators Commission – has reviewed the rules concerning guardianship management by parents. Work is currently in progress at the Government Offices on these issues.

5.5 Maintenance

5.5.1 Maintenance obligation

Parents are responsible for maintenance of their children according to what is reasonable having regard to the child's needs and the combined financial capacity of the parents. A parent who does not have any capacity to contribute to his or her child's support is not liable to pay maintenance.

The obligation to provide maintenance ceases when the child attains the age of 18. However, if the child's education is not then concluded, the maintenance obligation continues as long as the schooling continues, but at most until the child attains the age of 21.

Step-parents have some responsibility for the support of stepchildren. Step-parent means a person who permanently lives together with someone else's child and with a parent who has custody of the child. The step-parent is liable to maintain the child, provided the step-parent is married to the child's custodian or has a child together with the parent. If there are special

reasons, the maintenance obligation continues after the stepchild has left home, for example to study. The maintenance responsibility applies only to the extent that the child cannot receive maintenance from both his or her biological parents.

5.5.2 Maintenance allowance

A parent who is neither the custodian nor permanently lives together with the child shall fulfil his or her maintenance obligation by paying a maintenance allowance, that is to say usually a fixed amount per month. A parent who is a custodian jointly with the other parent may also be liable to pay a maintenance allowance. This is the case if the child lives permanently with only the other parent, regardless of whether that parent is single or lives together with a new partner. In general, a parent can be ordered by a court to pay a maintenance allowance if he or she neglects his or her maintenance obligation.

When a maintenance obligation shall be decided, a parent is entitled to retain from his or her net income after tax an amount for his or her own maintenance, the so-called reserve amount. Items under this heading include housing expenses, generally calculated as the gross cost reduced by any housing allowance. In addition to this, there are other living expenses which are computed with the guidance of a standard amount. This amount is calculated, year by year, as 120% of the base amount under the National Insurance Act. The price base amount for 2007 is SEK 40 300, which gives a standard amount of SEK 4030 per month. In special cases, there may be deviation from the standard amount and another amount for living expenses specified, for example if the parent has substantial expenses as a result of illness and the expenses are not compensated for by insurance indemnity or in some other manner.

The parent can also reserve an amount for maintenance of a spouse at home, for example following remarriage. The standard amount is then calculated, year by year, to be 60% of the base amount, in addition to housing expenses. If the spouse at home has some income the reserve amount is reduced. However, for a reservation to be made for that spouse, it is not enough that the spouse at home has no income or only a low income. Special reasons are also required, for example that the spouses have children of pre-school age or that the spouse is at home as a result of difficulties in obtaining gainful employment. Another person with whom the person liable to pay allowance lives permanently is equated with a spouse if they have children together. A registered partner is also equated with a spouse.

Lastly, the parent liable to pay allowance can make a reservation for an amount for the support of children at home. This special rule must be primarily regarded as a guarantee rule, intended to provide a child at home

with the corresponding protection as that provided by maintenance support (see Section 5.5.7) for a child who does not permanently live with both of his or her parents.

The extent to which the surplus of the parent liable to pay allowance should be appropriated for maintenance allowance for a child depends, among other things, on the child's needs and the other parent's capacity to bear the maintenance expenses. If allowances are to be paid to several children, the allowance to each child is, of course, less.

5.5.3 Expenses for contact

When a child stays with a parent liable to pay allowance, that parent has certain expenses for the child in addition to the maintenance allowance that he or she must pay. At the same time, the other parent has reduced expenses for the child. If the parent liable to pay allowance has had the child with him or her for a consecutive period of five days or, during one calendar month, had the child with him or her for at least six whole days, the parent may make a deduction from the maintenance allowance that he or she shall pay.

Unless the parents decide otherwise or the court considers there are special reasons for deciding on other conditions, a deduction may be made of $1/40$ of the monthly allowance for each complete day that the child has stayed with the person liable to pay allowance. However, a precondition is thus that the stay has lasted a consecutive period of at least five complete days or that the person liable to pay allowance has, during the calendar month, had the child with him or her for at least six complete days. In this context a complete day means the time from 00.00 to 24.00. When calculating the number of days, the day the child's stay ends is counted as one complete day. This presupposes that the stay does not start and end during the same day. If the stay has lasted a full month, the deduction is $\frac{3}{4}$ of the monthly amount.

Example: The child has been with the person liable to pay allowance for seven complete days consecutively. The maintenance allowance is SEK 900 per month.

The deduction is $\frac{7 \times 900}{40} = \text{SEK } 157$ (öre are not included).

The deduction right must, in principle, be utilised within six months of the end of the month when the stay ended.

However, if the parents have already, at the time the maintenance allowance was decided, counted on the person liable to pay allowance essentially fulfilling his or her maintenance obligation by having the child with him or her, no further special deduction can be claimed.

The main rule of the Code means that the deduction can be claimed only after the child has been with the person liable to pay allowance. As maintenance allowance is usually paid each calendar month in advance, the deduction can first be made on the next payment occasion, unless the person receiving the allowance agrees that a deduction can be made in advance. In order to avoid future disputes, it is appropriate that the parents keep a note of stays and deductions made.

5.5.4 Index-linking of maintenance allowances

The maintenance allowance is index-linked to ensure that it retains its original value. It is adapted according to alterations in the price base amount. However, this does not apply if another index clause was included in the judgment or the agreement when the allowance was decided.

The maintenance allowance has been altered every year since 1983, usually on 1 February. The alteration applies to maintenance allowance decided before 1 November of the immediately preceding year. The National Social Insurance Board determines each year whether maintenance allowance shall be altered and in that event by what percentage. In 2002 the amount of the allowance was increased by 2% and in 2003 and 2004 by 1%. During the years 2005 and 2006 there have not been any alterations.

5.5.5 Amending a judgment or an agreement

Maintenance allowance is decided by a judgment or an agreement. If the parties agree, they can amend the maintenance allowance determined by writing a new agreement. This also applies if the allowance was previously decided by a judgment.

If the parties cannot agree, they must apply to a court in order to have a previously decided maintenance allowance amended. The court can amend the allowance if the circumstances have changed. However, not every change can be referred to as a reason for amending the maintenance allowance. The change should be manifest and in excess of what may be expected as normal variations.

The court can also adjust an agreement that is unreasonable having regard to the circumstances when the agreement was concluded and the circumstances generally. Special reasons are required for the repayment of a maintenance allowance already received.

If maintenance allowance has been paid at an unaltered amount for six years, apart from alterations according to index legislation, the court can reconsider the maintenance allowance for the future without any special reasons for reconsideration needing to be cited. Thus, this rule means that a party can always have an allowance that has been decided reconsidered after six years. If reconsideration is not requested, the allowance is payable as previously.

It should be observed that the party who loses a maintenance case before a court should in general pay for his or her own and the opposing party's litigation costs. If it is the child that loses, the parent who represents the child should normally pay the litigation costs of the other party.

5.5.6 Statutory limitations

Claims for maintenance allowance determined are barred, that is to say can no longer be demanded, five years after the due date of payment. If any maintenance allowance has not previously been decided, the court cannot grant a request for allowance for a further period back than three years before the day when the application was made, unless the person liable to pay the allowance consents to this.

5.5.7 Maintenance support

A child is entitled to maintenance support from public funds if the parents do not live together and if the child permanently lives with only one of the parents. However, there is no right to maintenance support if the parent liable to pay allowance (that is to say, the parent who should satisfy his or her maintenance obligation by paying maintenance allowance to the child) pays maintenance allowance that is not less than the amount that should be paid out as maintenance support to the child.

Maintenance support to a child is payable at SEK 1 273 per month. If a parent liable to pay allowance pays to the child the same amount of maintenance as he or she would have to repay to the State (see below), this amount is deducted from the maintenance support.

When maintenance support is provided for a child and there is a parent liable to pay allowance, that parent shall repay to the State an amount that wholly or partially corresponds to the amount of the maintenance support. The repayment amount is calculated as a fixed percentage of the income of the parent liable to make the repayment.

The parent liable to make the repayment is deemed to have satisfied his or her maintenance obligations up to the amount provided in maintenance support to the child.

The residence parent, that is to say the parent with whom the child permanently lives and with whom the child is also registered as resident, is eligible to apply for maintenance support. The application is made to the social insurance office.

There is also a right to maintenance support when the child permanently lives with both of the parents (so-called alternating residence). In the case of alternating residence, maintenance support is paid in the amount of half of SEK 1 273 per month to each of the parents. From this amount there is then deducted half of the repayment amount that the parent would have

been liable to repay to the State, had the child lived only with the other parent.

In the case of alternating residence, each of the parents may apply separately for maintenance support for his or her own part.

5.6 Adoption

An adoption means that the person who is adopted (the adoptive child) obtains the legal status as a child of the person or persons who adopt him or her.

A person who wishes to adopt must have attained the age of 25. A person who is married may only adopt jointly with his or her spouse unless the adoption is of the other spouse's child (in which case the age limit is 18). In the same way, two registered partners can jointly adopt a child and one partner can adopt the other partner's child – biological or previously adopted (see Section 4.5)

An adoption normally requires the consent of the child if it has attained the age of 12. Consent is also required from the custodian of the child if the child is under 18.

Furthermore, an adoption requires the permission of a court. The court considers in this connection whether the proposed adoption is appropriate. Consideration by the court is preceded by an inquiry by the social welfare committee. Generally, the reason for an adoption is that someone wishes to bring up a small child as his or her own. In exceptional cases, however, an adoption may relate to an adult person, if there is a personal relationship between that person and the person or persons who wish to adopt.

In principle all legal links between the adoptive child and the child's family are severed by an adoption. The adoptive child inherits from its adoptive parents and not from its biological parents and vice versa. The adoptive child receives by the adoption the surname of the adoptive parents unless the court allows the child to retain its surname.

In Sweden, it is at present most common for adoption to be of children from foreign countries. A person who wishes to adopt a foreign child may apply to the local social welfare committee or to the Swedish Intercountry Adoptions Authority (MIA), Pa Box 308, 101 26 STOCKHOLM, telephone 46 (0)8-545 556 80.

6 Administrators and guardians *ad litem*

If a person cannot take care of him or herself, a court may appoint an administrator for him or her. The provisions concerning administrators have replaced the previous rules concerning declarations of incompetence.

A precondition for a person obtaining an administrator is that he or she, as a result of illness, mental disturbance, poor health or similar circumstances, is unable to take care of him or herself or his/her property. But an administrator may not be appointed if it would be sufficient to appoint a guardian *ad litem* for the individual or if he or she receives help in another less intrusive manner, for example from the notary department of a bank or from a relative.

The administrator's assignment shall be adapted to the circumstances in the individual case and may be limited to relate, for example, to the administration of a property or a particular part of the individual's pension. The individual loses control over that which falls within the assignment of the administrator, but otherwise retains the right to decide about his or her affairs. As regards the issues that are included in the administrator's assignment, it is the administrator who acts on behalf of the individual. The appointment of an administrator does not – in contrast to the former declaration of incompetence – imply the loss of the right to vote in general elections.

Before the court appoints an administrator, it shall obtain a doctor's certificate or a corresponding investigation into the individual's state of health. The opinions of, amongst others, the closest relatives and the social welfare committee shall also be obtained.

If the circumstances change, the scope of the administration may be adjusted. If an administrator is no longer needed, the administration shall cease.

There is only a limited circle of people who may apply for the appointment of an administrator for someone or request the adjustment or termination of an administration.

An alternative to the appointment of an administrator is, as mentioned, to appoint a guardian *ad litem*. The main rule is then that the individual retains

the right to decide about his or her affairs. The guardian *ad litem* must have the consent of the individual to be able to act on his or her behalf.

A guardian *ad litem* is not just appointed to monitor rights or in other ways help a person who needs assistance as a result of illness or the like. A minor may have a guardian *ad litem* to replace a guardian who is temporarily or permanently incapacitated or who should not exercise his or her guardianship (see Section 7.1). Children who come to Sweden without their parents and apply for a residence permit can be provided with a guardian *ad litem* to represent them and protect their interests in the period before a special custodian is appointed. In these cases, the guardian *ad litem* may act both as guardian and custodian of the child. A guardian *ad litem* may be appointed in other cases also to monitor the rights of an absent person or to administer his or her property.

Administrators and guardians *ad litem* are subject to the supervision of the chief guardian. Provisions concerning their administration and duty to report are largely the same as those applicable to guardians.

The chief guardian or chief guardian board in the municipality can provide further information about administrators and guardians *ad litem*.

7 Death

7.1 Estate inventory and estate notification

When a person dies, an estate inventory shall be prepared, that is to say an inventory is made of the assets and debts of the deceased. If the deceased was married, the assets and debts of the surviving spouse should also normally be included in the inventory. If the deceased was cohabiting and a division of property between cohabitees as a result of the death (see Section 3.2.3) is to be implemented, the surviving cohabitee's assets and debts should, to a certain extent, also be included in the inventory.

The estate inventory shall be prepared by two executors. The distributees shall be given notice to attend the preparation of the inventory. The distributees are the heirs and residuary testamentary beneficiaries (see Section 7.9). A surviving spouse or cohabitee is often a distributee but should also be given notice to attend the preparation of the estate inventory, even if he or she is not a distributee. Concerning notices to so-called secondary successors, see Section 7.6.2.

The estate inventory shall normally be made within three months of the death. Within one month of its preparation, it shall be submitted to the relevant tax authority.

Further information may be obtained from law offices and the notary departments of the banks. Some undertakers can also provide information.

When the assets of the deceased, including any shares in the property of the surviving spouse or cohabitee, are not sufficient to pay anything beyond the funeral expenses and other expenses occasioned by the death, an estate notification may be substituted for the estate inventory. Such notification is given by the social welfare committee, which can provide further information. An estate inventory must always be prepared if real property or site leaseholds are included in the estate.

If a parent dies and leaves a spouse and children under the age of 18, who have a share in the estate, the chief guardian shall generally appoint a guardian *ad litem* to represent the child in the estate inventory, estate investigation, division of property and distribution of the estate. A guardian *ad litem* shall also be appointed if both the child and its guardian or the spouse of a guardian have an interest in an undistributed estate.

7.2 Declaration of death

A decision to issue a declaration of death means that a person is deemed to be dead in spite of the fact that his or her body has not been found and it cannot therefore be established in the normal way that the person is dead. The missing person's spouse, cohabitee, heir or other persons with legal interests that are dependent on a declaration of death can apply to the Tax Agency for a declaration of death. A decision to issue a declaration of death leads to the commencement of all the consequences following a death, for example inheritance and disbursement of insurance.

As of 1 April 2005, a new Act concerning declaration of death is in force. A matter concerning declaration of death may be raised at the earliest five years after the disappearance of a person except in three cases. If it has been shown that the missing person is dead, he or she may be declared dead immediately. A matter concerning a declaration of death may be raised at the earliest one year after the disappearance of the person if it is highly probable that he or she is dead. If the degree of probability is high and the disappearance has occurred in connection with a natural disaster, a major accident or in similar circumstances, the matter may be raised immediately.

7.3 Division of property

If the deceased was married and the spouses had marital property (see Section 2.7.1), the division of marital property must take place before the assets of the deceased can be distributed (see Section 2.7.4). This also applies if the deceased was a cohabitee and the surviving cohabitee has requested a division of property. (see Section 3.2.3).

7.4 Liability for the deceased's debts

The deceased's debts may exceed his or her assets, including any share in the property of the surviving spouse or cohabitee. Nowadays, the legal owners of the estate do not have any personal liability for the debts of the deceased, but a division of property or distribution of the estate that takes place before the debts of the deceased have been paid shall be annulled.

7.5 Distribution of estate and agreements on co-occupation of an undistributed estate

After the division of marital property has taken place and the debts of the deceased have been settled, a distribution of the estate may be implemented. There is no time limit within which a distribution must be implemented, but it is wise to sort out the situation as soon as possible.

A document shall be prepared concerning the distribution of the estate and shall be signed by the distributees. Witnesses are not required.

Every estate distributee can request the district court to appoint a special estate distributor to implement the distribution of the estate. If the estate is subject to the administration of an official estate administrator or an executor of a will, that person is also normally the distributor of the estate.

The distributees are not compelled to implement a distribution of the estate. Instead, they may agree to allow the estate to continue to hold the assets of the deceased. This is known as co-occupation of an undistributed estate. The fact that an estate remains undistributed has certain consequences regarding income and wealth tax.

7.6 Survivors entitled to inheritance

The order of inheritance states how the remainder of the estate of a deceased person shall be divided in different cases. The deceased may, however, have decided on another division by a will. Consequently, what is stated below largely only applies if there is no will. The issue of wills is dealt with in further detail in Sections 7.7 and 7.9.

7.6.1 If the deceased was unmarried

The direct heirs (children, grandchildren, etc.) have the prime right of inheritance from an unmarried person. These are referred to as the first inheritance class.

In the first instance, children inherit. If any of the deceased's children has died before the deceased (or declines inheritance rights), his or her children assume his or her place. Every branch obtains equally large portions. Assume, for example, that someone is survived by a son and the two children of a deceased daughter. If the inheritance amounts to SEK 100 000, the son receives SEK 50 000 and the grandchildren SEK 25 000 each.

(Regarding the rights of children to inherit from their father when the parents were not married to each other, see Section 7.8).

If there are no direct heirs, the inheritance goes to the second inheritance class, which consists of the deceased's parents and their children (=the deceased's siblings, nephews and nieces, etc.).

Also in this case, the branches obtain equally sized portions. Assume, for example, that someone is survived by his or her mother and two full siblings. The mother receives half the inheritance while the father's half is shared between the siblings. However, if the siblings are the deceased's half-siblings (have the same mother), the mother takes the entire inheritance; the deceased father can only pass on the inheritance to his own children.

If there are no persons of the second inheritance class either, the inheritance passes to the third inheritance class. This consists of the grandparents and their children (= the deceased's aunts and uncles on both his mother's and father's sides). The distribution is made in accordance with the same principles as apply to the second inheritance class. It should be noted that the deceased's cousins do not have any right of inheritance at all even if they are the only relatives of the deceased.

If there are no relatives entitled to inherit, the inheritance passes to the National Inheritance Fund. The proceeds of the fund are used for promotion of the care and upbringing of children and young people and also the care of people with disabilities. The fund is administered by the Legal, Financial and Administrative Services Agency.

7.6.2 If the deceased was married

When a married person dies, the main rule is that the remainder of the estate passes to the surviving spouse. However, this does not apply if, at the time of death, a divorce case was pending between the two spouses. If a spouse dies during the period for reconsideration that in certain cases shall precede a divorce (see Section 2.8), the other spouse consequently does not have any right to inherit from the deceased.

The remainder of the estate passes to the surviving spouse with a right of ownership if the deceased did not leave any heirs of the first or second inheritance class (see Section 7.6.1). If there are any such heirs, the surviving spouse receives the remainder of the estate with a free right of disposal, which means that the surviving spouse may do what he or she wants with the property during his or her lifetime – even use it up completely – but cannot dispose of it by will. When the surviving spouse dies, the relatives of the first deceased spouse are entitled to a secondary inheritance. Those who can inherit in this situation are successors of the first and second inheritance class, that is to say in the first instance direct heirs and, in the second instance, parents and siblings (see Section 7.6.1). Their inheritance is normally one half of the remainder of the last deceased spouse's estate.

The first deceased spouse's secondary heirs (secondary successors) are distributees of the surviving spouse's estate. They should be given notice of the estate inventory in relation to both spouses.

Regarding the direct heirs of the deceased, what is stated above only applies to those who are also direct heirs of the surviving spouse. It is only the common direct heirs who must wait for their inheritance until both spouses are dead. Those who are only direct heirs of the deceased spouse (children from a previous marriage) are entitled to receive their inheritance immediately on the death of the spouse. Such a direct heir may, however, decline his or her right to this priority in favour of the surviving spouse. In

that case, he or she obtains a right to secondary succession on the death of the surviving spouse in the same way as the common direct heirs.

A special so-called base amount rule applies for the benefit of the surviving spouse, whereby the surviving spouse, after the division of marital property and the distribution of the estate, should always receive at least four base amounts (SEK 161 200 in 2007). Here the spouse's share in the division of marital property (property subject to marital property rights) and the separate property the spouse may have are used as a basis. If this does not amount to four base amounts, the spouse is entitled to obtain the deficit out of the remainder of the estate of the deceased. This applies even if the deceased spouse's property was separate property, even if there are no common direct heirs and even if the deceased spouse made a will concerning the entire remainder of the estate.

7.7 Legal portion

Half of a direct heir's inheritance portion in accordance with the order of inheritance is referred to as a legal portion. The legal portion is equal in size irrespective of the age of the heir. What is said below concerning 'children' also applies to other direct heirs, hence in the first instance grandchildren, who have taken the place of a deceased child.

A child is entitled to receive its legal portion, even if the parent by a will has decided that the remainder of the estate should wholly or partially pass to some other person. Assume, for example, that a person who is survived by a spouse and a common child has, by a will, left the entire remainder of his or her estate to a good friend. The child is entitled to demand its legal portion. In the same way, a child, who is not also a child of the surviving spouse, may demand his or her legal portion if the parent has left the remainder of the estate to the surviving spouse.

However, the right to a legal portion does not have priority in relation to the surviving spouse's claim in accordance with the so-called base amount rule (see Section 7.6.2). This also applies to the surviving spouse's inheritance rights under the order of inheritance. Thus, common children cannot demand any kind of legal portion on the death of the first parent. And if the parents, for example by a mutual will, have decided that the remainder of the estate after both their deaths should pass to some third person, the child can only obtain its legal portion when both parents have died.

In order to receive his or her legal portion, the direct heir must request an adjustment of the will. This is done either by a claim for a legal portion being notified to the testamentary beneficiaries or by an action being instituted at court. Adjustment must be requested within six months from when the heir was served with a copy of the will.

7.8 The right of the child to inherit from its father when its parents were not married

As of 1 January 1970, all children have equal rights of inheritance from both their mother and their father. Previously, a child only had a right of inheritance from his or her father if the father had been married to the child's mother. Exceptions applied if the parents were engaged to be married or if the father had left a special inheritance declaration.

Special provisions apply regarding children whose parents were not married to each other and who were born before 1 January 1970. If an inheritance right would not have existed between the father and the child by virtue of the former rules, the child and his or her direct heirs do not inherit the father and his relatives except in certain circumstances. There is a right of inheritance if, before the death, note of the child was entered in a personal file at the parish civil registration office or entered in the population register with the father or with someone else from whom the child derives his or her inheritance right. If no such note has been entered, a right of inheritance exists only if the child, within three months of the death, becomes known to another of the distributees, the estate distributor or the person holding the estate. If the estate inventory is prepared later, the time limit expires at that time.

Note of the child in the personal file or entered in the population register with the father may consequently be of particular importance as regards the inheritance rights of the child. Since 1 January 1968, all children are automatically noted in their father's personal file (from 1 July 1991 in the population register) provided that paternity is legally established. During the years 1947-1967, notes were only entered in the personal file of a man for children born during an engagement and children for whom the man had issued a special inheritance declaration. Those children who were not noted in their father's personal file or registered in the population register with the father must themselves take the initiative to ensure that registration takes place. As indicated by what is stated above, it is important that such registration is made in order that the child should not lose his or her right of inheritance. The Swedish Tax Agency can provide information on how to proceed.

7.9 Wills

A person may decide by a will about the remainder of his or her estate. A person who, by a will, receives the entire remainder of the estate, a proportion of it or what remains after certain amounts have been paid is termed a residuary testamentary beneficiary. A person who receives a particular

article or a certain amount of money is called a legatee. A legatee is not a legal owner of the estate.

Normally, a will shall be prepared in writing in the presence of two witnesses. There are particular requirements for witnesses. The will must also satisfy certain other formal requirements.

It is only necessary to make a will if a different order of inheritance is desired to that laid down by law. If, for example, two spouses have children together and they want the children to receive part of their inheritance on the death of the first spouse, they must make a will.

The rights of a child to a legal portion cannot be negated by a will. If a person who has children disposes of all of his or her remainder of the estate by a will, the children can nevertheless demand their legal portion (see Section 7.7). However, the children can, of course, accept the will and decline their legal portion.

If the deceased was married or cohabiting, a division of property must normally be completed before the amount of the remainder of the estate can be decided (see Sections 2.7.4 and 3.2.3). A will can only relate to the property that is attributable to the deceased's portion in the division of property.

It is important that a will satisfies the formal requirements and that the intentions of the will are clearly indicated. It is therefore advisable to seek the advice of a lawyer before a will is drawn up. Assistance in making a will is offered by law offices or the notary departments of the banks.

The will and other documents shall be served on the heirs, who have six months in which to appeal against it. If no appeal is made within this period, the heirs cannot thereafter claim that the will is invalid.

A will can, in the event of an action appealing against it, be declared invalid if, *inter alia*, it has not been prepared in the prescribed form or if it has been prepared under the influence of mental illness.

7.10 International aspects

Special rules apply regarding relationships with international connections. There are two Acts from 1935 pertaining to Nordic relationships and one Act from 1937 concerning other international relationships.



Advice and other assistance

8.1 Family advice service

The family advice service is an operation to facilitate discussions aimed at dealing with cohabitation conflicts in couples' relationships and families. The discussions can take place before, during and after a separation. In those cases where there are children, the family advice service can contribute to moderating conflicts so that the parents are capable of functioning together as parents after the separation. In some cases, the family advice service can also take on difficult cooperation discussions, but may not approve an agreement on custody, residence and contact. Contact with the family advice service is voluntary and takes place on the couple's or family's own initiative. For the family advice service to be accepted with confidence and be able to fulfil its function, those who turn to the service must be sure that the information provided, which is often sensitive, will not be passed on to others. Consequently, the family advice service has particularly stringent rules on secrecy. Those who so wish can contact the family advice service anonymously.

All municipalities are by law liable to provide a family advice service either through the agency of the municipality or through some other appropriate professional counsellor. The family advice service should be arranged as an independent operation. Family advice officers are social welfare workers with higher education in dealing with relationships. Anyone who wishes to have contact with the family advice service can get in touch with his or her municipality. The municipality is entitled to impose a charge for family advice service.

Family advice service is also conducted by, for example, church organisations.

8.2 Cooperation discussions

In this context, cooperation discussions means discussions where the parents, under expert guidance, endeavour to reach a common view on issues relating to custody, residence and contact. The objective of the discussions

is to reach consensus solutions. But even if this objective cannot be reached, the parents may through these discussions acquire a greater understanding of one another's views and learn to deal with their conflicts in a manner that causes as little detriment to the children as possible.

All the municipalities in Sweden offer the opportunity for cooperation discussions. Parents who have problems with issues relating to custody, residence or contact who wish to undertake cooperation discussions may contact their municipality. If court proceedings concerning custody, residence or contact have already been instituted, the court can take the initiative for cooperation discussions. There is no charge for cooperation discussions.

Support and assistance is also provided by Child and Youth Psychiatry Outpatient Care (BUP). Parents with children and young people may themselves contact BUP. An appointment for a visit may be booked directly with the clinic. Those who so prefer may apply to the school doctor or other doctor for a referral. The family advice service and the social welfare committees may also arrange contact. Visits are voluntary and the applicants are also in this case guaranteed secrecy.

8.3 The functions of the social services

The tasks of social services include, among other things, promoting the preconditions for good living conditions and responsibility for care, service, information, advice, support and care, financial assistance and other support to families and individuals who need it. The social services have special tasks as regards care of children and young people and shall, among other things, work to ensure that children and young people grow up in secure and good circumstances. The social services are responsible for ensuring that children who need to be cared for and brought up outside their homes receive care in accordance with the Social Services Act or in accordance with the Care of Young Persons (Special Provisions) Act (LVU).

The social services have special tasks as regards investigating who is the father of a child, as mentioned above (see Section 5.1).

The social services also have important tasks as regards custody of children, the residence of children and contact with children. On many occasions, social services can assist in resolving conflicts that affect children by means of cooperation discussions (see Section 8.2). The municipalities are also liable to help parents to conclude agreements about custody, residence and contact. This obligation includes assisting parents as regards the division of travel expenses that may arise in connection with contact. If the parents are not in agreement in a case concerning custody, residence or contact, the court often requests the social welfare committee to conduct an investigation. In certain cases, the court may request that the municipality

appoint a contact person who is present when the contact takes place and who is appointed by the social welfare committee. As indicated in Section 5, the municipality is also authorised to present a case in certain custody and contact cases.

The municipalities are obliged to ensure that parents who so wish receive assistance to conclude agreements on custody, residence and contact. The obligation of the municipalities to attend to the provision of assistance to parents in concluding agreements on issues concerning contact also covers the matter of the division of travel expenses that may arise in connection with contact.

8.4 Legal assistance

Legal assistance is provided by, among others, attorneys and assistant lawyers at law offices in Sweden.

It is possible to obtain short legal counsel at many law offices under the Legal Aid Act, for a small fixed charge. The charge can be reduced by half if the financial situation of the person applying for legal assistance gives cause to do so. A person who needs further assistance in a legal matter can in certain cases obtain legal aid. In that event the State makes a contribution and pays a small or substantial part of the expenses in the legal matter that the legal aid relates to, *inter alia* expenses for an attorney or other legal counsel. A person who has been granted legal aid must him or herself contribute to the expenses if he or she has a certain income. The amount the individual should contribute increases in line with his or her income. The right to legal aid lapses for higher income categories. Legal aid is not granted if the applicant has legal aid insurance or any other kind of legal protection that covers the issue in question. Nor is legal aid normally granted if the applicant should have had legal protection insurance.

Special reasons are required for legal aid to be granted in a matter concerning divorce and issues relating thereto (for example issues concerning the custody of children), and also for matters concerning the maintenance of children. Special reasons may exist, for example, if the circumstances are more complicated than usual and require more comprehensive legal assistance. More detailed information concerning legal aid can be provided by law offices. Further information on legal aid is also available on the National Courts Administration's website, www.dom.se.

Note: A person who loses litigation and is ordered to pay the litigation costs of the other party, must bear this cost personally, even if he or she has legal aid in the case.

As indicated in Section 8.3, certain legal assistance is also provided by the municipalities.



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Ministry of Justice, Sweden