

## Differences Between Cohabitation and Marriage



To marry and go through life together as a couple – that is an extremely emotional step. The decision alone is influenced by highly charged emotions. However, the decision regarding the status of your life together also has a considerable financial impact. An understanding of this and the ability to deal with it actively will give you a high level of security, in particular if the unexpected happens.

### Ties That Stand the Test of Time

For married couples their wedding day is one of the greatest moments in their life. Their emotions and personal memories are immortalized in innumerable photographs and in every heart. In contrast to the emotional aspect, however, this fact sheet is dedicated to the legal and financial aspects of marriage in comparison with cohabitation. Therefore it is also important for a couple to examine the impact of a decision not to marry but to cohabit.

### Legal Basis

Marriage is comprehensively governed in the Swiss Civil Code as part of family law. Although cohabitation is extremely common there is no legal basis underpinning it. Therefore courts mainly rely on societal norms and contract law when dealing with such cases, which is problematic, since the provisions are not intended to govern the situation of two people living together. By concluding a cohabitation agreement this problem can be avoided.

### A Wide Range of Differences

The differences between marriage and cohabitation can be seen everywhere. For example, there is the right to information and to visit in an emergency, or questions regarding custody for joint children or regarding a formalized separation or divorce.

### Federal Old Age and Survivors' Insurance (AHV)

Married couples benefit from the contributions of the other when it comes to the AHV. Within the framework of the splitting of contributions when calculating the pension, the contributions are taken into account and thus increase the individual pension of the spouse who earns less. In the event of death, the surviving spouse also receives a surviving spouse's pension. Married women are entitled to a surviving spouse's pension upon the death of their husband

- if they have one or more children (irrespective of age) at the time of the death of their husband or
- if they are 45 or older at the time of the death of their husband and they were married for at least five years.

Upon the death of their wife, married men receive a surviving spouse's pension if they have children under the age of 18. Even divorced spouses are entitled to a pension under certain circumstances.

On the other hand, the ceiling placed on the spouses' retirement pension is disadvantageous as it amounts to only one and a half times the maximum individual pension.

However, the AHV does not recognize any benefits for cohabiting partners.

### Occupational Benefits (Pension Fund)

In the event of death, the surviving spouse with a duty of maintenance for children receives a surviving spouse's pension.

Spouses without a duty of maintenance for children receive this if they are 45 years of age or older and the marriage lasted at least five years.

Divorced spouses are also entitled to a pension from the pension fund under certain circumstances.

Any benefits for cohabiting partners will be explained in the benefit regulations of the relevant pension fund. As pensions for cohabiting partners are not governed by a statutory norm it is recommended that you contact your pension fund in each individual case.

### Vested Benefits

If someone who is married dies and leaves behind a vested benefits account, the lump-sum benefit is first and foremost paid out to the surviving spouse. Any orphans, foster children or, in certain circumstances the divorced spouse, can also be beneficiaries, insofar as they are entitled to survivors' benefits pursuant to the BVG. Further beneficiaries can also be determined to a limited degree, meaning that the cohabiting partner can be a beneficiary in the case of unmarried couples, for example.

In every case it is important to communicate your individual wishes regarding beneficiaries to the vested benefits institution.

## Voluntary Pension Provision (Tied and Free Pension Provision)

According to the order of beneficiaries, pillar 3a pension assets are normally first paid out to the surviving spouse. However, it is also possible to make certain changes here. In order for cohabiting partners to be taken into account, it is recommended that you should contact your pension foundation.

The order of beneficiaries used by life insurance companies in the case of free pension provision can be structured on an individual basis under the Insurance Contract Act.

The remaining pension assets after death are transferred to the entitled beneficiaries in accordance with inheritance law and, in the case of married couples, according to the law on marital property.

## Inheritance Law and Succession of Assets

Whilst the inheritance of assets for spouses is governed in detail in inheritance law, a surviving cohabiting partner is not deemed to be a relative and therefore does not qualify as a legal heir. Any bequests to a cohabiting partner must be individually governed via a will or inheritance contract. Due to the legal entitlement of family members who are beneficiaries this is not always possible.

Heirs	Inheritance share Art. 457 ff. SCC	Compulsory portion Share	Actual	Divisible portion	Inheritance share Art. 457 ff. SCC	Compulsory portion/ divisible portion
		Share	Actual			
		in inheritance Art. 471 SCC				

### Unmarried testator

<b>Cohabiting partner</b>	0	0	0		
<b>Mother</b>	1/2	1/2	1/4	1/4	
<b>Father</b>	1/2	1/2	1/4	1/4	
	1/1		1/2	1/2	

### Married testator

<b>Spouse</b>	3/4	1/2	3/8	3/8	
<b>Mother</b>	1/8	1/2	1/16	1/16	
<b>Father</b>	1/8	1/2	1/16	1/16	
	1/1		1/2	1/2	

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## Tax Considerations

In the case of income and wealth taxes the income and the assets of married persons subject to tax are assessed jointly, whereas cohabiting partners are taxed individually. Although some cantons try to mitigate the effect of this through different measures (e.g. partial splitting in the canton of Schaffhausen), in many cases this leads to a higher tax burden for dual income married couples (in particular in the case of federal taxes).

In the case of inheritance and gifts, however, the tax burden favors married couples, as they are either exempt from tax or enjoy special tax privileges in all the cantons.

## Considerable Financial Consequences for Cohabiting Partners

The differences described above can have serious financial consequences for cohabiting couples in certain life situations. This is particularly the case if there are joint or mutual responsibilities such as joint children or a jointly owned property, for example.

However, the greatest risk has to be the death of one of the cohabiting partners. Because both the regulations of the pension funds as well as the inheritance laws are disadvantageous for cohabiting persons (reduced or no benefits and/or limited options), this risk deserves special attention.

## Contact us

We will be happy to arrange a personal consultation.

Call us at 0844 200 114\*; Mon.–Fri., 08:00–20:00.

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