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# The protection of family interests versus the testator's freedom of will in Swedish inheritance law[1]

## Introduction

Succession law is an important element of the legal system for the protection of private property and the intergenerational transfer of assets. The constitutional background to succession law in Swedish law lies in the general protection of property rights set out in Chapter 2, Section 15 of the Instrument of Government[2]. Detailed rules on inheritance are contained in the Swedish Inheritance Code[3]. Swedish inheritance law also recognises the principle of testamentary freedom, allowing a person to determine the

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[2] Kungörelse (1974:152) om beslutad ny regeringsform [Instrument of Government].
[3] Ärvdabalk (1958:637) [Swedish Inheritance Code], hereinafter: ÄB.

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distribution of their estate by will within the limits imposed by mandatory statutory rules.

However, the testator's autonomy is not absolute. The Swedish legislature has put in place a number of mechanisms to limit this autonomy in order to protect the testator's closest family members, in particular their descendants. The primary instrument of this protection is the reserved portion (*laglott*), available exclusively to descendants, guaranteeing them half the share they would have received under statutory succession[4]. This institution does not apply to the testator's spouse, whose position is primarily secured by the rules governing the division of marital property (*bodelning*), the base amount rule (*basbeloppsregeln*) and deferred inheritance (*efterarv*).

Taken together, these mechanisms demonstrate that Swedish inheritance law seeks to balance testamentary autonomy with the legally recognised interests of particular family members. The aim of this article is to analyse this relationship and to examine the principal legal mechanisms through which Swedish law restricts testamentary freedom in order to protect descendants, the surviving spouse and, to a more limited extent, the surviving cohabiting partner.

The study primarily employs the doctrinal legal method, based on an analysis of Swedish statutory law, case law and legal scholarship. The doctrinal analysis is supplemented by a limited comparison with Polish inheritance law. Although succession law is often regarded as a field strongly shaped by national and cultural factors, comparative analysis remains useful for identifying similarities and differences between the legal mechanisms adopted in different systems (De Waal 2019, pp. 1073–1074). Particular attention is paid to the case law of the Swedish Supreme Court (*Högsta domstolen*) and to Swedish legislative preparatory materials (*förarbeten*). In analysing the proposed reform, particular weight is given to the official Swedish Government Report SOU 2025:91. The literature is used only as supplementary material, while conclusions concerning the content of Swedish law are based primarily on legislation, case law, authoritative legal commentaries and official preparatory works.

[4] Chapter 7, Section 1 of the ÄB.

For the purposes of this paper, 'family interests' should not be understood as a single or uniform collective interest of the family. Rather, the term refers to the legally protected economic interests of particular categories of persons connected with the testator, primarily descendants and the surviving spouse and, if relevant, the surviving cohabiting partner. These interests may conflict with one another since a testamentary disposition may favour one family member at the expense of another. The analysis therefore focuses on the mechanisms by which Swedish inheritance law balances the testator's autonomy against the legally protected positions of different family members.

The Swedish model is particularly relevant from a Polish perspective because both legal systems restrict testamentary freedom in order to protect close family members, but they employ different legal mechanisms and define the circle of protected persons differently. Under Swedish law, the reserved portion (*laglott*) is available exclusively to descendants and amounts to one half of the statutory share to which the relevant descendant would otherwise be entitled. Under Polish law, descendants, the surviving spouse and the testator's parents may be entitled to the compulsory portion (*zachowek*), provided that they would be called to inherit by law. As a rule, the compulsory portion amounts to one half of the statutory share, while an entitled person who is permanently incapable of work or an entitled descendant who is a minor is entitled to two thirds of that share[5]. Moreover, under Polish law, the compulsory portion is, as a rule, enforced through a monetary claim, whereas under Swedish law, where testamentary dispositions infringe a descendant's reserved portion, the descendant must request an adjustment of the will (*jämkning*) in order to obtain the protected share.

## The statutory order of succession under Swedish law

Swedish inheritance law establishes a statutory order of succession based on three classes of relatives, while the surviving spouse's

[5] Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny [Act of 23 April 1964 – Civil Code], Dz.U. z 2026 r. [Journal of Laws of 2026], poz. [item] 795, Article 991 §§ 1–2.

statutory inheritance rights are regulated separately in Chapter 3 of the ÄB. In the absence of a valid testamentary disposition, or to the extent that the estate has not been effectively disposed of by will, succession is governed by the statutory rules. A person may inherit only if they are alive at the time of the deceased's death; however, a child conceived before the death may inherit if born alive[6].

Among relatives, Swedish law distinguishes three classes of statutory heirs (*arvsklasser*): the descendants of the deceased; the parents of the deceased and their descendants, including siblings and their descendants; and the grandparents of the deceased and their children, i.e. the deceased's uncles and aunts (Brattström, Singer 2023, pp. 33–36). More remote relatives, including cousins, do not inherit by law (Brattström, Singer 2023, pp. 36–37)[7]. If there is no person entitled to inherit under the preceding statutory rules, the estate passes to the Swedish Inheritance Fund (*Allmänna arvsfonden*)[8].

Within the statutory order of relatives, the principle of representation applies within the limits laid down in Chapter 2 of the ÄB. If a child of the deceased has died before the deceased, that child's descendants take their place, with each branch receiving an equal share. A later class of relatives is called to inherit only where there is no eligible heir in an earlier class[9].

The first class of heirs comprises the deceased's descendants, with children inheriting equal shares. For succession purposes, adopted children are treated on an equal footing with the deceased's other children (Firsching 2025, p. 1279)[10]. Within the statutory order of relatives, the existence of an heir in the first class excludes heirs belonging to the second and third classes.

The second class comprises the deceased's parents and their descendants. In the order of succession among relatives, where there are no descendants, each parent is entitled to one half of the estate. If either parent is dead, that parent's share passes to the deceased's

6 Chapter 1, Section 1 of the ÄB.
7 Chapter 2, Sections 1–4 of the ÄB.
8 Chapter 5, Section 1 of the ÄB.
9 Chapter 2, Sections 1–3 of the ÄB.
10 Chapter 4, Section 21 of Föräldrabalk (1949:381) [Children and Parents Code].

siblings or, where a sibling is dead, to that sibling's descendants. If there are no siblings or descendants of siblings and one parent is still alive, that parent inherits the entire estate. Half-siblings participate only in the share attributable to the parent through whom they are related. If both parents are dead and there are no full siblings or descendants of full siblings, the half-siblings inherit the estate; the descendants of a deceased half-sibling inherit that half-sibling's place[11].

The third class consists of the deceased's grandparents and their children, i.e. uncles and aunts. If both the paternal and maternal sides are represented, each side inherits one half of the estate. If no eligible heir exists on one side, the whole estate passes to the eligible heirs on the other side[12]. Descendants of uncles and aunts, including cousins, do not inherit by law (Firsching 2025, p. 1285)[13].

## Deferred inheritance and the base amount rule as forms of protection for the surviving spouse under Swedish succession law

The surviving spouse holds a special position within the Swedish system of statutory succession. If all of the deceased's descendants are also descendants of the surviving spouse, the estate passes to the surviving spouse, while the common descendants receive their inheritance only upon the surviving spouse's death, under the rules on deferred inheritance (*efterarv*). The position of descendants who are not also descendants of the surviving spouse (*särkullbarn*) is different: as a rule, they are entitled to receive their share immediately upon the deceased's death. However, such a descendant may waive their immediate right to inherit in favour of the surviving spouse. In that case, the descendant instead acquires a right to deferred inheritance in the surviving spouse's estate[14].

A surviving spouse who inherits from the first deceased spouse generally acquires the inherited estate with a right of free disposal

11 Chapter 2, Section 2 of the ÄB.
12 Chapter 2, Section 3 of the ÄB.
13 Chapter 2, Section 4 of the ÄB.
14 Chapter 3, Sections 1, 2 and 9 of the ÄB.

(*fri förfoganderätt*). This means that the surviving spouse may use, consume and dispose of the property *inter vivos*, but may not by will dispose of the share that is ultimately to pass to the heirs of the first deceased spouse (Firsching 2025, pp. 1280–1281)[15]. If the surviving spouse, through a gift or a comparable act and without due regard to the heirs of the first deceased spouse, causes a substantial reduction in the estate, the rules provide for compensation in favour of those heirs and, in certain circumstances, for the return of the gift or its value (Brattström, Singer 2023, p. 150)[16].

An additional form of protection for the surviving spouse is provided by the base amount rule (*basbeloppsregeln*). Under this rule, the surviving spouse is entitled, so far as the deceased's estate is sufficient, to receive property from the estate of such value that, together with the property received by the surviving spouse in the division of marital property (*bodelning*) and their separate property (*enskild egendom*), it amounts to four times the price base amount (*prisbasbelopp*) applicable at the time of death[17]. The price base amount is determined annually under Swedish social insurance legislation. Testamentary dispositions are ineffective to the extent that they infringe the surviving spouse's entitlement under the base amount rule[18].

## The reserved portion (*laglott*) in Swedish law

The reserved portion (*laglott*) constitutes the principal mechanism protecting descendants (*bröstarvingar*) against testamentary dispositions under Swedish inheritance law. The *laglott* amounts to one half of the statutory share (*arvslott*) to which each descendant

15 Chapter 3, Section 2 of the ÄB.

16 Chapter 3, Section 3 of the ÄB.

17 Chapter 3, Section 1, second paragraph of the ÄB; Chapter 2, Sections 6–7 of Socialförsäkringsbalk (2010:110) [Swedish Social Insurance Code]. For 2026, the price base amount (*prisbasbelopp*) is SEK 59,200, so that four price base amounts correspond to SEK 236,800; see Förordning (2025:872) om prisbasbelopp och förhöjt prisbasbelopp för år 2026 [Swedish Regulation on the base amount and the increased base amount].

18 Chapter 3, Section 1, second paragraph of the ÄB.

is entitled[19]. The *laglott* is calculated as a fraction of the descendant's statutory share and does not, as such, confer a right to any particular asset. If a testamentary disposition restricts a descendant's ability to dispose freely of property corresponding to the reserved portion, the descendant is entitled to receive the *laglott* in property over which they may freely dispose[20].

The reserved portion does not operate automatically where it has been infringed by a testamentary disposition. A descendant who wishes to obtain the *laglott* must request an adjustment of the will (*jämkning*). The request must be made within six months from the service of the will[21], either by notifying the testamentary beneficiary of the claim or by bringing an action against them. Failure to act within this period results in the loss of the right to request adjustment and thereby obtain the reserved portion (Brattström, Singer 2023, p. 117)[22]. Failure to request an adjustment of the will is not, in itself, equivalent to an ordinary waiver of inheritance. The decision whether to request such an adjustment is personal to the descendant[23].

Swedish legislative materials identify two principal functions of the reserved portion: preserving part of the deceased's estate for the descendants and promoting a degree of equality among descendants by limiting the testator's ability to favour one of them excessively at the expense of others (SOU 2025:91, p. 213). The protection afforded by the *laglott* extends beyond testamentary dispositions and also encompasses certain lifetime dispositions, including gifts that are a functional equivalent of testamentary dispositions under Chapter 7, Section 4 of the ÄB (Brattström, Singer 2023, pp. 207–208; SOU 2025:91, pp. 212–213)[24].

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19 Chapter 7, Section 1 of the ÄB.

20 Chapter 7, Section 5 of the ÄB.

21 In the case of a written will, service (*delgivning av testamente*) is effected by delivering a certified copy of the testamentary instrument to the heir. Different rules apply to an oral will, and service is unnecessary where the heir has approved the will; see Chapter 14, Section 4 of the ÄB.

22 Chapter 7, Section 3 of the ÄB.

23 Chapter 7, Section 7 of the ÄB; NJA 2011, p. 957.

24 Chapter 7, Section 4 of the ÄB.

The continued existence of the reserved portion has been the subject of both doctrinal debate and legislative review. In the course of the family-law reforms of the 1980s, its abolition was proposed, *inter alia*, as a means of strengthening the position of the surviving spouse. The proposal was ultimately rejected. Among the arguments for retaining the *laglott* were the need to protect descendants against substantial inequality in treatment and the particular risk that descendants who are not common to both spouses (*särkullbarn*) could otherwise be excluded from inheritance (SOU 2025:91, pp. 213–214). More recent legislative review has likewise concluded that there are insufficient grounds for introducing general changes to the reserved portion, such as reducing its proportional size or introducing a monetary cap (SOU 2025:91, pp. 232–235).

## Protection of the reserved portion (*laglott*) under Swedish law

The protection of the reserved portion extends, in certain circumstances, beyond testamentary dispositions. Chapter 7, Section 4 of the ÄB provides enhanced protection (*förstärkt laglottsskydd*) against lifetime gifts which, having regard to their purpose, are a functional equivalent of testamentary dispositions. The rule constitutes an exception to the general principle that a person is free to dispose of their property during their lifetime (Brattström, Singer 2023, pp. 120–121)[25].

Swedish case law identifies two typical situations in which a gift may be regarded as a functional equivalent of a testamentary disposition. The first is where the donor expects death in the relatively near future. The second is where the donor formally transfers the property but retains its essential benefit or use during their lifetime. These situations are not exhaustive: the testamentary purpose of a gift may also be established on the basis of other circumstances, including statements made by the donor concerning the intended succession[26].

[25] Chapter 7, Section 4 of the ÄB; NJA 2021, p. 605.

[26] NJA 2022, p. 277. See also NJA 1998, p. 534 and NJA 1973, p. 687.

The decisive consideration is whether the gift, assessed in light of its circumstances and conditions, was intended to serve a succession-related purpose rather than a substantial interest of the donor during their lifetime. The enhanced protection is therefore not a general restriction on lifetime gifts, but applies where the transaction is, in purpose, comparable to a testamentary disposition[27]. For the purposes of calculating the reserved portion, the value of the gifted property is added to the estate. If restitution is required, the Supreme Court has held that the relevant basis is, in principle, the full value of the gifted property at the time of restitution[28]. If the application of Chapter 7, Section 4 results in an infringement of the reserved portion, the recipient may be required to return the corresponding part of the gifted property or, if restitution is not possible, to pay compensation corresponding to its value. A descendant seeking to enforce this right against the recipient must bring an action within one year from the completion of the estate inventory (*bouppteckning*); failure to comply with this time limit results in the loss of the right of action (Firsching 2025, p. 1295)[29]. The enhanced protection may also apply to gifts made by the deceased to one descendant at the expense of another. In NJA 2022, p. 277, the Supreme Court held that monetary gifts made to one descendant could be regarded as a functional equivalent of testamentary dispositions where the donor had expressed an intention to prevent the other descendant from receiving the reserved portion. The gifts were therefore subject to restitution to the extent necessary to satisfy the other descendant's *laglott*[30].

## The will as an instrument of testamentary autonomy under Swedish law

Under Swedish law, a will is the principal legal instrument through which a person exercises their testamentary autonomy. The making of a will is a strictly personal legal act. A person who has reached the age of 18 may dispose of their estate by will. A minor who has

27 NJA 2021, p. 605; NJA 2022, p. 277.
28 Chapter 7, Section 4, first paragraph of the ÄB; NJA 2021, p. 605.
29 Chapter 7, Section 4, first and second paragraphs of the ÄB.
30 NJA 2022, p. 277.

reached the age of 16 may also make a will, but only in respect of property over which they are legally entitled to exercise independent control[31].

A testamentary beneficiary may be either a natural or a legal person, including, for example, a foundation (Firsching 2025, p. 1287). As a general rule, a testamentary disposition in favour of a person who was neither born nor conceived at the testator's death is ineffective. Chapter 9, Section 2 of the ÄB nevertheless provides a limited exception permitting dispositions in favour of future descendants who would be entitled to inherit from a person capable of inheriting under the first paragraph of that provision. Such future descendants must acquire full ownership of the property no later than upon the death of that person or when another prior right to the property expires. The provision further requires equal treatment of siblings who were neither born nor conceived at the testator's death[32].

An ordinary will must be made in writing and attested by two witnesses. In the simultaneous presence of both witnesses, the testator must either sign the testamentary instrument or acknowledge an existing signature. The witnesses must then attest the instrument by signing it themselves. They must know that the document is a will, although they don't need to know its provisions[33]. Certain persons are disqualified from acting as testamentary witnesses, including persons under the age of 15, persons who lack an understanding of the significance of the attestation because of a mental disorder, and certain persons closely connected with the testator or the testamentary beneficiary[34].

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31 Chapter 9, Section 1 of the ÄB. See also Chapter 9, Sections 1, 3 and 4 of Föräldrabalk (1949:381), concerning property over which a minor may exercise independent control.

32 Chapter 9, Section 2 of the ÄB.

33 Chapter 10, Section 1 of the ÄB.

34 Chapter 10, Section 4 of the ÄB. In particular, a person under the age of 15 or a person who, because of a mental disorder, lacks an understanding of the significance of the attestation may not act as a testamentary witness. The testator's spouse or cohabiting partner, lineal relatives or relatives by marriage, and siblings are likewise disqualified. Nor may a person attest a testamentary disposition made in favour of themselves or certain persons closely connected with them.

In exceptional circumstances, Swedish law permits an emergency will (*nödfallstestamente*). If, because of illness or other emergencies, testator is unable to make an ordinary will, they may dispose of their estate either orally before two witnesses or, without witnesses, by means of a document written entirely by hand and signed by the testator. The latter, holographic form requires the document to be written by the testator personally (Walin, Lind 2024, p. 284)[35]. An emergency will is valid temporarily. It becomes invalid if the testator has an uninterrupted period of three consecutive months during which they are able to make an ordinary will[36].

Swedish law also recognises mutual wills (*inbördes testamenten*), commonly used by spouses or cohabitants to make reciprocal testamentary dispositions (Brattström, Singer 2023, p. 130; SOU 2025:91, p. 294). A mutual will typically provides that the survivor is to inherit an estate from the first deceased and may also contain an after-inheritance provision concerning the distribution of that property after the survivor's death (SOU 2025:91, p. 294)[37]. If one testator unilaterally revokes or amends a mutual will in a manner that substantially alters the basis of the reciprocal dispositions, that person may lose the rights otherwise conferred on them by the will[38].

The interpretation of a will is governed primarily by the testator's intention, supplemented by the statutory rules of interpretation and principles developed by case law (Agell, Brattström 2025, pp. 67–86)[39].

A testator may revoke a testamentary disposition by revoking it in the form prescribed for the making of a will, by destroying the testamentary instrument, or by otherwise unequivocally indicating that the disposition no longer represents their final wishes. A promise not to revoke a will is not legally binding. Any addition to or amendment of an existing will must comply with the formal requirements applicable to the making of a will[40].

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35 Chapter 10, Section 3 of the ÄB.
36 Chapter 10, Section 3 of the ÄB.
37 See also Chapter 10, Section 7 of the ÄB.
38 Chapter 10, Section 7 of the ÄB.
39 Chapter 11, Sections 1–9 of the ÄB.
40 Chapter 10, Sections 5–6 of the ÄB.

A will may be invalid if the testator was not legally entitled to dispose of their estate by will or where the statutory formal requirements were not satisfied. A will is also invalid if it was made under the influence of a mental disorder. Further grounds include coercion, improper exploitation of the testator's lack of understanding, weakness of will or position of dependence, fraudulent inducement, and a mistake that was decisive for the testator's decision to make the will (Brattström, Singer 2023, pp. 103–104)[41].

An action challenging the validity of a will (*klandertalan*) must be distinguished from a request for adjustment of the will (*jämkning*) made in order to obtain the reserved portion. An heir who wishes to invoke one of the grounds of invalidity set out in Chapter 13 must bring a *klandertalan* within six months after service of the will. By contrast, *jämkning* under Chapter 7, Section 3 does not challenge the validity of the will as such, but modifies its effects to the extent necessary to secure the descendant's *laglott*[42].

## *Giftorätt* and the right to take over the common home as forms of protection for the surviving spouse under Swedish law

Under Swedish law, each spouse owns and controls their own property and is responsible for their own debts. Marriage therefore does not create co-ownership of the spouses' assets or a community of property comparable to the statutory matrimonial property regime existing under Polish law (Teleman 2022, pp. 23–24)[43].

Within this system, an important element of the financial protection of spouses is the matrimonial property regime based on *giftorätt*. This does not make one spouse a co-owner of property belonging to the other spouse. Rather, it constitutes a latent

41 Chapter 13, Sections 1–3 of the ÄB.

42 Chapter 14, Section 5 in conjunction with Chapter 13, Sections 1–3 of the ÄB; Chapter 7, Section 3 of the ÄB.

43 Chapter 1, Section 3 of Äktenskapsbalk (1987:230) [Swedish Marriage Code], hereinafter: ÄktB. For comparison, see Ustawa z dnia 25 lutego 1964 r. – Kodeks rodzinny i opiekuńczy [Act of 25 February 1964 - Family and Guardianship Code] Dz.U. z 2026 r. [Journal of Laws of 2026], poz. [item] 236, Article 31 § 1.

entitlement that becomes relevant upon the division of matrimonial property (*bodelning*) (Agell, Brattström 2022, p. 105), including where the marriage is terminated by the death of one of the spouses (Firsching 2025, p. 1302). For the purposes of *bodelning*, Swedish law distinguishes between *giftorättsgods* and *enskild egendom*. As a general rule, a spouse's property constitutes *giftorättsgods* unless it qualifies as *enskild egendom* (Teleman 2022, pp. 52, 55). Separate property may arise, *inter alia*, under a matrimonial property agreement (*äktenskapsförord*) or where property is received by gift, will or inheritance subject to a condition that it is to be separate property (Teleman 2022, p. 56)[44].

Upon *bodelning,* following the death of one spouse, the surviving spouse has a unilateral right to depart from the ordinary rule of equal division. At the surviving spouse's request, each side may retain its own *giftorättsgods* as its share in the division[45]. This option is particularly significant if the surviving spouse's *giftorättsgods* exceeds that of the deceased, since it prevents the surviving spouse from having to transfer part of their property to the deceased's side merely in order to achieve equal division. The deceased spouse's property remaining on that side of the *bodelning* subsequently forms part of the estate to be administered and distributed in accordance with the applicable rules of succession (Firsching 2025, p. 1302).

The surviving spouse may also receive preferential protection in relation to the spouses' common home and household goods. The spouse who has the greater need for the common home or household goods may be entitled to take over that property as part of the *bodelning*. If the property belongs to the other spouse, the takeover must also be reasonable in light of the circumstances as a whole. The entitlement does not, however, extend to certain forms of the other spouse's *enskild egendom*, including property made separate by a condition attached to a gift, will or inheritance (Agell, Brattström 2022, p. 237)[46]. Ordinarily, the value of the proper-

[44] Chapter 7, Sections 1–2; Chapter 9, Section 1; and Chapter 10, Section 1 of the ÄktB.

[45] Chapter 12, Section 2 of the ÄktB. See also Chapter 11, Section 3 of the ÄktB for the ordinary rule of equal division.

[46] Chapter 11, Section 8, first paragraph, in conjunction with Chapter 7, Section 2, first paragraph, points 2–4 of the ÄktB.

ty taken over is charged against the surviving spouse's share. If the surviving spouse cannot provide the corresponding value through other property included in the division, a monetary equalisation payment may be required. Property of minor value may, however, be allocated without deduction from the spouse's share[47].

If the *bodelning* is occasioned by the death of one spouse, this preferential right to take over the common home or household goods may be exercised only in favour of the surviving spouse; the heirs of the deceased cannot invoke it for their own benefit[48].

## Protection of same-sex spouses, registered partners and cohabitants under Swedish law

Since 1 May 2009, Swedish marriage law has been gender-neutral. Same-sex spouses therefore enjoy the same statutory succession rights and other legal protections connected with marriage as opposite-sex spouses[49]. Registered partnerships entered into under the former Registered Partnership Act before its repeal in 2009 may nevertheless continue to exist. Unless such a partnership has been converted into a marriage or dissolved, the former legislation continues to apply, under which a registered partnership has, as a general rule, the same legal effects as a marriage[50].

Cohabitants (*sambor*), by contrast, do not acquire statutory inheritance rights merely by virtue of their cohabitation. Their statutory protection upon the death of a partner is therefore primarily property-based and is considerably more limited than the protection afforded to a surviving spouse (Asland 2015, pp. 164–165). Under the so-called small base amount rule (*lilla basbeloppsregeln*),

47 Chapter 11, Sections 8 and 10 of the ÄktB.

48 Chapter 11, Section 8, third paragraph of the ÄktB.

49 Chapter 1, Section 1 of the ÄktB; Lag (2009:253) om ändring i äktenskapsbalken [Swedish Act amending the Marriage Code], which entered into force on 1 May 2009.

50 Sections 2–3 of Lag (2009:260) om upphävande av lagen (1994:1117) om registrerat partnerskap [Swedish Act repealing the Act on Registered Partnerships]; Chapter 3, Section 1 of the former Lag (1994:1117) om registrerat partnerskap [Swedish Act on Registered Partnerships].

a surviving cohabitant is entitled, as their share in the distribution of the net cohabitation property (*samboegendom*) after deduction of debts and insofar as the property is sufficient, to receive property corresponding in value to two price base amounts (*prisbasbelopp*) applicable at the time of death (Brattström, Singer 2023, p. 89; SOU 2025:91, p. 167)[51]. The rule is not subject to a minimum duration of cohabitation, which is one of the reasons why the level of protection has traditionally been set lower than that applicable to a surviving spouse.

The Cohabitation Act provides further protection through the rules governing the division of cohabitation property. A common home and household goods constitute *samboegendom* where they were acquired for the partners' joint use, subject to the statutory exceptions[52]. Where the relationship terminates because one cohabitant dies, only the surviving cohabitant is entitled to request a *bodelning*; the deceased partner's heirs have no corresponding right to initiate the division[53]. If a division is requested, the net value of the *samboegendom*, after the relevant deduction of debts, is in principle divided equally. The equal-division rule may, however, be adjusted if, particularly in view of the duration of the relationship, the partners' financial circumstances and other relevant circumstances, an equal division would be unreasonable[54]. Where the deceased cohabitant owned *samboegendom* of greater net value than the survivor, requesting a *bodelning* may therefore significantly benefit the surviving cohabitant, who may in principle receive one half of the total net value of the cohabitation property (Brattström, Singer 2023, p. 89; SOU 2025:91, p. 166).

The surviving cohabitant may also receive preferential protection in relation to the common home and household goods. Under

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51 Section 18, second paragraph of Sambolag (2003:376) [Swedish Cohabitation Act], hereinafter: SamboL; Chapter 2, Sections 6–7 of Socialförsäkringsbalken (2010:110). For 2026, the price base amount is SEK 59,200, so that two price base amounts correspond to SEK 118,400; see Förordning (2025:872) om prisbasbelopp och förhöjt prisbasbelopp för år 2026.

52 Sections 3–4 of the SamboL.

53 Sections 8 and 18, first paragraph of the SamboL. See also Section 20 of the SamboL.

54 Sections 13–15 of the SamboL.

Section 16 of the SamboL, the cohabitant who has the greater need for the home or household goods may be entitled to take over that property as part of the division. If the property belongs to the other cohabitant, the takeover must also be reasonable in light of the circumstances as a whole. The value of the property is generally charged against the recipient's share, although property of minor value may be allocated without such deduction[55]. If the cohabitant taking over the home or household goods cannot satisfy the other side through other *samboegendom*, an equalisation payment may be required[56]. Upon the death of one cohabitant, the statutory rights to request a division and to take over the home or household goods operate only in favour of the surviving cohabitant[57].

A further housing safeguard may apply even where the common dwelling does not constitute *samboegendom*. Where the dwelling is held by the other cohabitant as a tenancy or co-operative apartment, the surviving cohabitant may, in certain circumstances, take it over if they have the greater need for the dwelling and the takeover is reasonable in light of the circumstances as a whole. Where the cohabitants do not have and have not had children together, such a takeover requires exceptional reasons[58].

The case-law doctrine of implied or hidden co-ownership (*dold samäganderätt*) may provide an additional form of property protection for cohabitants, including in relation to property falling outside the statutory definition of *samboegendom*. Under the principles developed by the Supreme Court, property formally acquired in the name of one cohabitant may, in certain circumstances, be treated as having been acquired for both partners. The principal requirements are that the property was acquired for their joint use, that the cohabitant who does not formally appear as owner made a financial contribution to the acquisition, and that the parties intended the ownership to be shared (Agell, Brattström 2022, pp. 284–285; Błaszczyk 2025, pp. 61–62). If the first two circumstances are established, a common intention regarding ownership may, depending

[55] Section 16 of the SamboL.
[56] Section 17 of the SamboL.
[57] Section 18, first paragraph of the SamboL.
[58] Section 22 of the SamboL.

on the circumstances surrounding the acquisition, be presumed[59]. The assessment focuses primarily on the circumstances existing at the time of acquisition. For property subject to statutory formal requirements, however, the position of the hidden co-owner before a formal transfer or a final judgment is primarily an obligational claim against the formal owner rather than a fully protected ownership right against third parties[60].

## Proposals for reform of Swedish inheritance law in SOU 2025:91: Protection of surviving cohabitants

In the context of the present study, particular importance attaches to SOU 2025:91, *Nya regler om arv och testamente – bland annat ett testamentsregister i offentlig regi och ett stärkt skydd för efterlevande sambor*, an official report (*betänkande*) prepared by the government-appointed Inquiry on modern inheritance and testamentary law (*Utredningen om en arvs- och testamentsrätt i tiden*). Reports published in the *Statens offentliga utredningar* (SOU) series constitute an important part of the Swedish legislative preparatory process (*förarbeten*). Although an SOU report does not constitute binding law, it may have interpretative relevance, particularly where its proposals subsequently form part of the legislative materials leading to enacted legislation. The report was circulated for consultation (*remiss*), with the consultation period ending on 15 January 2026. As of September 2026, no Government bill (*proposition*) or referral to the Council on Legislation (*lagrådsremiss*) based on SOU 2025:91 had been issued.

One of the principal reforms proposed in SOU 2025:91 concerns the introduction of a statutory possibility for heirs to waive the immediate receipt of their inheritance in favour of the surviving cohabitant. The proposal would apply to all statutory heirs, not only descendants. An heir making such a waiver would retain a right to deferred inheritance (*efterarv*) and would therefore become an

[59] NJA 1980, p. 705; NJA 2013, p. 242. See also NJA 2004, p. 397 and NJA 2008, p. 826.

[60] NJA 2013, p. 242.

*efterarvinge*, entitled to receive the relevant share upon the death of the surviving cohabitant. The surviving cohabitant would hold the property with a right of free disposal (*fri förfoganderätt*), in a manner broadly modelled on the existing rules applicable to surviving spouses (SOU 2025:91, pp. 177–178). The proposed rules would be placed in a new Chapter 4 of the ÄB (SOU 2025:91, p. 181).

The proposed system would also protect the deferred inheritance rights of heirs of the first deceased cohabitant. In particular, the surviving cohabitant would not be entitled by will to dispose of the proportion of the estate held with a right of free disposal that is ultimately to pass to the *efterarvingar* (SOU 2025:91, pp. 433–434). The proposed new Chapter 4 would also contain a rule corresponding to the existing *vederlagsregeln* for spouses, providing protection if the surviving cohabitant, through a gift or a comparable transaction and without reasonable regard to the heirs of the first deceased cohabitant, reduces their property to a non-negligible extent (SOU 2025:91, pp. 200–204). Special rules would additionally protect the *efterarvingar* if a surviving cohabitant subsequently marries or enters into a new cohabiting relationship (SOU 2025:91, p. 181).

The proposal would also modify the operation of the reserved portion where a will has been made in favour of a surviving cohabitant. If the deceased and the surviving cohabitant have a common descendant (*gemensam bröstarvinge*), that descendant would retain the right to request an adjustment of the will (*jämkning*) in order to secure the *laglott*. However, the reserved portion would not be paid immediately. Instead, to the extent of the *laglott*, the surviving cohabitant's acquisition would be converted from full ownership to a right of free disposal, while the common descendant would receive a corresponding right to deferred inheritance upon the surviving cohabitant's death. By contrast, a descendant of the deceased who is not also a descendant of the surviving cohabitant would retain an unconditional right to receive the *laglott* immediately (SOU 2025:91, pp. 179–180).

SOU 2025:91 further proposes allowing a testator, in specified circumstances, to restrict a descendant's right to the *laglott*, wholly or in part, by testamentary disposition. The proposed rule would apply to a descendant who has been convicted by a final judgment of an

intentional offence constituting a serious violation of the testator's person and for which, at the time of the offence, the statutory minimum penalty was at least one year's imprisonment. The proposal would also cover attempt, preparation or conspiracy to commit such an offence, as well as participation in it (SOU 2025:91, pp. 218–226). The same mechanism would apply where the qualifying offence was committed against certain persons closely related to the testator, namely the testator's spouse, cohabitant or sibling, a person related to the testator in the direct ascending or descending line or by affinity, or a descendant of the testator's spouse or cohabitant. This list is exhaustive (SOU 2025:91, pp. 228–231). The proposal is thus not based on a general assessment of morally objectionable conduct, but on narrowly defined serious criminal conduct.

## Conclusion

An analysis of Swedish inheritance law reveals a legal framework in which testamentary autonomy is balanced against the protection of legally recognised interests of particular family members. On the one hand, Swedish law recognises meaningful, but legally qualified, testamentary autonomy, allowing the testator to determine the distribution of the estate within the limits imposed by mandatory rules. On the other hand, this autonomy is constrained by mechanisms designed to protect certain close family members. Importantly, these interests are not necessarily uniform: the interests of descendants, the surviving spouse and a surviving cohabitant may differ and may, in particular situations, conflict with one another.

A key role is played by the reserved portion (*laglott*), which gives descendants a legally protected entitlement corresponding to one half of their statutory share. If that protection is infringed by a testamentary disposition, however, the descendant must act within the statutory time limit in order to obtain the reserved portion. This protection is reinforced by rules addressing certain lifetime gifts and comparable transactions that, having regard to their purpose, are a functional equivalent of testamentary dispositions. The surviving spouse, by contrast, is protected through a combination of statutory succession rights, deferred inheritance mechanisms, the

four-price-base-amount rule and matrimonial-property rules governing *bodelning* and the common home.

The reform proposals presented in SOU 2025:91 point to an increasing concern with the economic position of surviving cohabitants. The proposed rules would strengthen the position of the surviving cohabitant, in particular by enabling heirs to defer the receipt of inheritance in the survivor's favour and by adapting certain aspects of the reserved-portion regime, while at the same time protecting the deferred rights of heirs. These proposals remain *de lege ferenda* and, as of September 2026, have not resulted in enacted legislation. Nevertheless, they illustrate an ongoing attempt to adapt Swedish succession law to changing family structures while continuing to reconcile testamentary autonomy with the legally protected interests of descendants, spouses and cohabitants, which may at times conflict.

From a comparative perspective, the Swedish model should therefore not be characterised simply as a system of extensive testamentary freedom. Its distinctive feature lies instead in the particular combination of testamentary autonomy, a reserved portion available exclusively to descendants, extensive statutory and matrimonial-property protection of the surviving spouse, and substantially more limited statutory protection of the surviving cohabitant. In particular, whereas Polish law protects a broader circle of persons (Zachariasiewicz 2006, p. 201) through a predominantly monetary compulsory-portion (*zachowek*) mechanism (Borysiak 2008, p. 162; Zachariasiewicz 2006, p. 198), Swedish law confines the *laglott* to descendants but combines it with separate and comparatively strong mechanisms protecting the surviving spouse[61]. The comparison with Polish law thus demonstrates that similar objectives of family protection may be pursued through markedly different legal mechanisms and may extend to different categories of family members (Reid et al. 2020, pp. 752–765). The Swedish model is therefore relevant not merely as a description of a national system, but as a comparative point of reference in the broader discussion on the appropriate balance between testamentary autonomy and the legally protected interests of different family members.

[61] Article 991 §§ 1–2 of the Act of 23 April 1964 – Civil Code.

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## The protection of family interests versus the testator's freedom of will in Swedish inheritance law

### Abstract

The article analyses the relationship between testamentary autonomy and the protection of family interests in Swedish inheritance law. Swedish inheritance law recognises testamentary freedom, but that freedom is materially constrained by statutory rules protecting particular family members, most notably the descendants' reserved portion (*laglott*), which corresponds to one half of the statutory share of each entitled descendant. The paper also examines mechanisms preventing the circumvention of this protection through gifts made during the testator's lifetime. Particular attention is paid to the position of the surviving spouse, including deferred inheritance (*efterarv*) and the base amount rule (*basbeloppsregeln*), as well as to the more limited protection granted to surviving cohabitants. Methodologically, the study employs a doctrinal legal analysis of Swedish legislation, case law, legal scholarship and legislative preparatory materials, supplemented by a limited functional comparison with Polish inheritance law. The article also discusses the reform proposals contained in SOU 2025:91. The analysis demonstrates that Swedish inheritance law does not rest on unrestricted testamentary autonomy, but on a balance between the testator's freedom and the legally protected, potentially competing, interests of descendants, spouses and cohabitants.

**Key words**: *laglott*; surviving spouse; cohabitants; mandatory family protection; comparative succession law

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The authors declare that no generative artificial intelligence or AI-assisted technologies were used in the preparation of this manuscript

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