

4 Housing & Ownership

4.1 Rent

4.1.1 Joint tenancy agreement

If both partners are the main tenants of a joint flat, the tenancy agreement must be signed by both partners. Therefore, they are jointly and individually liable for the payment of the rent. Even if a sharing of the rent costs has been agreed internally, the landlord can demand payment of the whole rent from both of them. In the case of joint tenancy, all actions with effect towards the landlord can only be taken jointly, e.g. assertion of defects, reduction of rent, termination, extension of the tenancy, etc. The landlord must also demand payment of the entire rent from both parties. The landlord must also give notice to both partners jointly, i.e. serve a notice of termination in due form.

In the event of separation, a dispute may arise between the two partners if it is not clear who is allowed to stay in the flat. In the absence of legal regulations, these matters should be clarified in advance by mutual agreement and in writing.

4.1.2 Subletting

The tenant may sublet to his partner with the landlord's consent. They are then liable to the landlord for ensuring that the subtenant uses the flat in the same way as they (the main tenant) is permitted to use it themself.

4.2 Transfer of use - Precarium

When one partner moves into the other's flat, this does not create a tenancy or subtenancy. Only when he or she contributes to the costs and there is a clear agreement on a joint tenancy or subtenancy does he or she become the main tenant or subtenant. If there is no agreement and one partner does not contribute to the rental costs, he is not considered a tenant but a so-called *precarist*. The actual tenant can therefore kick him out at any time (revocation).

4.3 Home ownership

4.3.1 Forms of ownership

There are different forms of ownership:

- In the case of sole ownership, one partner buys the property alone, and only he or she is entered in the property register. He or she is free to dispose of the property freely, i.e. sell it, encumber it, etc. The other partner has no say in the ownership of the property. The other partner has no rights of co-determination.
- In the case of joint ownership, only both partners can dispose of the property jointly. It cannot be divided, which is why, who owns how much, is not recorded in the land register.
- In the case of co-ownership or condominium ownership, the two partners buy the property together, but each acquires a separate share - registered in the land register. Each can then freely dispose of his or her share. Those who buy the property jointly are jointly and individually liable, i.e. each is responsible for the debts to the creditor (e.g. bank).

4.3.2 Acquisition of real estate

Whichever ownership variant is chosen: When buying real estate, it should be clearly regulated who will invest and to what extent, and what will happen to the real estate if the couple separates.

- If one partner grants the other a loan for the purchase of real estate, a written loan agreement should be concluded, which regulates how and when the loan is to be repaid and interest paid.

- Unmarried partners can purchase real estate (land, houses, flats) jointly and be registered as co-owners in equal shares at the land register. When a partnership ends, one partner can pay off the other, i.e. take over the other co-ownership share. If no agreement is reached, each co-owner can bring an action for partition against the other. The property is then divided in real terms or auctioned off and the proceeds then divided proportionately between the two.
- If a partner is a co-owner, he or she can, under certain circumstances, have a right of residence or right of occupancy entered in the land register. This ensures that he or she does not have to move out in the event of separation.

4.4 Household goods / joint acquisitions

In principle, the buyer is also the owner of the goods he or she purchased. The buyer's partner is not entitled per se to co-ownership of these goods. To acquire joint ownership, a clear agreement between the partners is required.

4.5 Gifts

Gifts are contracts in which a person is given a thing or a right, free of charge, i.e. without reciprocation. Generally, a gift is only effective if the object of the gift is actually handed over. If no actual handover takes place in the case of gifts, an additional formal act, i.e. a written gift contract, is required. In the case of real estate, a contract with the land registry is necessary anyway.

In principle, a gift cannot be reversed unilaterally. The law provides for exceptions, according to which gifts can be revoked under certain conditions, for example if the donor is considered poor or because of gross ingratitude, i.e. if the donor has been injured in body, honor, freedom, or property or this has been a criminal act (punishable act according to the Criminal Code) (§§ 938 ff ABGB).