



WOMEN'S PROPERTY RIGHTS IN KOSOVO

“Do Not Remain Silent”

Purpose

The purpose of this brochure is to provide women in Kosovo with information on property rights. The brochure is divided in four parts as follows: 1) a general introduction on property rights; 2) information on the right to inheritance; 3) property in marriage or non-registered marriage and 4) a guide to the legal aid system and information on accessing laws. The brochure explains the main procedural safeguards to enable women to identify the best possible approaches to realize their property rights, while emphasizing that the law enables them to be a driving force behind the actual implementation of the laws.

1. Property Rights in General

What does property ownership mean?

To be a property owner means that YOU can possess, use, and transfer property within limits defined by law and in accordance with the nature and purpose of the object and public interest.

Are women and men equal in property rights?

YES! Kosovo's laws guarantee equality and non-discrimination. The right to own property belongs to both women and men without distinction. The Kosovo Constitution, among other laws, guarantees:

- equality before the law;
- the right to own property;
- the right to legal remedies, to seek legal protection of your rights; and
- protection against discrimination.

Kosovo's laws grant equality among women and men in the enjoyment of these rights.

2. Right to Inheritance

What is inheritance?

Inheritance is the transfer of a dead person's property based on the law or on the will (inheritance) of a dead person (decedent) to one or several persons (heirs) according to the law. The grounds for acquiring an inheritance are based on the law or the will.

When is inheritance acquired?

Inheritance is acquired at the moment of the person's death. Under conditions provided by law, any heir who is alive at the time of the inheritance, or any heir conceived before the death of the decedent and born alive within 300 days after the decedent's death, may inherit.

For example: If you are pregnant when your husband dies and the child is born alive, this child will be also his heir.

Is the inheritance share greater for men than for women heirs?

NO! Each heir, under the same conditions, is equal in inheritance. The law makes no distinction between men or women. The share of the inheritance is based on your relationship (wife, sister, brother, child, etc.) to the dead person.

For example: If the dead person had no will, his/her spouse and children will inherit in equal shares the inheritance property. His/her children – male and female – will inherit the same shares.

What do I need to know about the inheritance procedure?

Upon the person's death the inheritance procedure is opened. The court is the competent authority to conduct the procedure and decide on inheritance rights.

You must know:

- The municipal body that maintains the death



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“Women Have Your Say...”

recording book is obliged-- within 15 days from the day the death is recorded, to send the death certificate to the court;

- The death certificate is very important for the inheritance procedure as it contains data on the dead person and the time of death; data on persons with the potential right to inherit; and information on the property belonging to the dead person;
- The death certificate is prepared based on data obtained from the dead person's relatives; persons with whom the dead person used to live and other persons with relevant information needed to complete the death certificate;
- As soon as the court is notified that a person has died or is announced dead by a court judgement, (in missing person cases) the court starts the inheritance procedure.
- However, in practice, most of the time the inheritance procedure is initiated upon the filing of proposals by the interested parties and sometimes many years after the death of the person.

If the court does not start the inheritance procedure within the legal timeframe you might want to initiate the procedure yourself. It is very important to have the inheritance court procedure completed as soon as possible to avoid transfer of property and so that the heirs can make use of the property and its benefits.

Who decides on the inheritance share?

The competent court decides on the inheritance share except in cases when there is a will prepared by the person before they die. A will is an expression of the final wishes of the dead person regarding how they want their property distributed after their death. The will is made in written form. However, in exceptional cases, a will may also be made verbally when the legal criteria is met.

Do I have to give up my right to inherit?

NO! Every person can, but no one is obliged to, declare that they do not want their inheritance

share. If a person does not declare that they do not want their inheritance they are entitled to inherit their share of the inheritance.

Both women and men may give up their inheritance rights under the law. However, this must be done voluntarily and not under any pressure. If a heir gives up their right to inheritance it cannot be acquired again and she/he will have no say with regard to the inheritance share ever again. Therefore it is vital that YOU decide on this freely and without any pressure. YOU always have the right to keep your inheritance share and no one can force you to give it up.

3. Property in Marriage and Non-Registered Marriage

I am married –do I have right to property?

YES! In marriage spouses are equal in all of their rights. Kosovo law guarantees that none of the spouses can be deprived of her/his property without a legal basis.

Marriage is a legally registered community of two persons of different sexes, through which they freely decide to live together with the goal of creating a family.

Under conditions provided by law a factual relationship (non- registered marriage relationship) is a relationship between a husband and the wife who live [as] a couple, characterized by a joint life that represents a character of stability and continuation.

The rights of spouses in both legally registered and non-legally registered marriage is discussed below.

Joint spouse property is:

- property acquired through work during the course of the marriage as well as income derived from such property;
- property acquired jointly through gambling games;



Spouses are owners in equal shares to the joint property unless otherwise agreed.
For example: YOU and your spouse are both owners of movable and/or immovable property you gained during marriage, such as: the apartment; the land; the jewelry and/or the money, etc.

Separate spouse property is:

- property belonging to the spouse at the time of entering into marriage;
- property acquired during marriage through inheritance or donation or other forms of legal acquisition defined in the law;
- property belonging to the spouse based on their proportion of common property;
- in some cases, art, intellectual work or intellectual property.

Each spouse independently administers and possesses her/his separate property during the course of the marriage.
For example if YOU inherit a house during your marriage and there are tenants in that house, the house as well as the rent which they pay, stays your separate spouse property. Thus, although you gained this property during the marriage – you own and administer it separately and independently from your partner.

When can a spouse divide joint property?

At any time spouses can divide their joint property, either by:

- Appropriation by agreement- whereby with written agreement spouses determine their shares in their joint property and become co-owners to the own determined shares;
- Appropriation by court order- where, a court determines the property shares of spouses in accordance with legal criteria.

But I am a home worker, mother and care for my children and never work outside the house- Do I have property rights?

YES! Even if you have never been employed and the only family income is the salary of your husband, his income is your joint property. If you decide to divorce or to divide the property for any other reason, the court will divide the joint property and assign part of this property to you. The court must evaluate all circumstances and consider not only personal income and other assets of each spouse, but the contribution made by each spouse,

such as child care; housework; care and maintenance of property; and any other form of work and co-operation related to the administration, maintenance and contribution to the acquisition of the joint property.

Do these rights apply also to women in a traditional marriage, which is not legally registered?

YES! The law also recognizes and regulates the joint property of spouses in a traditional marriage where the marriage was not legally registered. According to law “a factual relationship (non registered marriage relationship) is equal to a legally registered marriage”. In sum, the rules relating to the division of joint property that apply to legally registered spouses apply to those in traditional non-registered marriages.

Should my name be registered in the ownership registry along with my spouse as the owner? Why is it important?

YES! The law provides that “property created during marriage is registered in the public register as a joint property in the name of both partners” and that “[...] work of both partners through which joint property is created, is considered equal contribution for the creation of the joint property.” The joint registered property is administered jointly and may not be taken from one spouse without the consent of both partners.

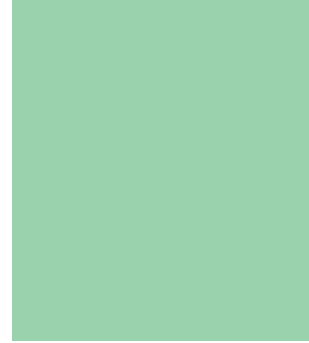
4. Legal Aid and your rights

What shall I do if my property rights are being violated? How do I recognize whether I am being discriminated against and what can I do about it?

Discrimination occurs if YOU are treated less favourably than another person, in a comparable situation, because of your sex, gender, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or conviction, religion or belief, race, social origin, property, birth or any other status.

If YOU think YOU have been discriminated against, file a complaint. Once YOU file the complaint, the burden of proof is upon the relevant authorities to prove otherwise. If discrimination is proved the competent authority can impose fines or grant other relief to the injured party. Discrimination in the context of property cases can occur when YOU try to register property in your name and the competent authority refuses to do so without any legal grounds. Discrimination can also occur in court proceedings if you are not given an opportunity to be heard and given the chance to express your desire to inherit your property.

Discrimination on the basis of gender in access to housing and to all other forms of property is against the law. If you believe you have been discriminated against, you have a



right to complain and get legal aid (see below).

But how do I pursue my rights when I cannot afford a lawyer?

Kosovo has established a system for free legal aid in civil, administrative, minor offence and criminal cases to assure citizens with insufficient financial means to access justice.

Free legal aid is a right to free legal professional services for Kosovo's citizens. To be eligible for free legal aid, citizens have to meet certain eligibility criteria under the law.

Free legal aid, can include:

- information and legal advice regarding legal procedures;
- drafting of paper-work and other technical aid that has to do with the filing of a complaint and/or completion of a case;
- representation in civil, administrative and minor offence cases;
- defense and representation in all phases of criminal proceedings;
- information and legal advice related to court proceedings;
- information, legal advice and aid in the mediation and arbitration procedure as foreseen under by the law. (*Mediation and arbitration are informal mechanisms to have a case settled out of court by the use of a neutral third party*).

To get access to free legal aid YOU need to submit the application at your nearest legal aid office. Officials of the office for legal aid are obliged to advise YOU about free legal aid and the application process. Call the Agency for Free Legal Aid at: 038 200 189 36 or search its official web site at: <http://www.knj-rks.org> and learn more about

the legal assistance you can get at your nearest Free Legal Aid Office.

5. Know YOUR rights

Is it important for me to understand my rights?

YES! To realize YOUR rights it is vital that YOU know YOUR rights. Even if YOU have a lawyer or are entitled to free legal aid it is very important that YOU familiarize yourself with YOUR property and related rights. Although YOU might find it difficult to understand the legal technical language in some laws, it is important that YOU consult these laws to gain a general sense of what your rights are. YOU need to be your own best advocate.

To know your property rights consult:

- The Kosovo Constitution;
- Kosovo's Gender Equality Law;
- Family Law of Kosovo;
- Inheritance Law;
- Law on Property and Real Rights;
- Law on Anti-Discrimination;
- Law on Free Legal Aid.

These laws are published and available in hard copy as well as in electronic copy in five languages: Albanian, English, Serbian, Turkish and Bosnian. The electronic copy of the Official Gazette in which these laws are published is accessible on the internet: <http://gazetazyrtare.rks-gov.net/> If YOU have no access to the internet contact the Agency for Free Legal Aid discussed above.

Familiarize yourself with your rights - To be able to protect your rights; to make your own decisions; and, to make sure you understand your options and decide what's best for you.

“Women should not remain silent and should have their say on the equitable distribution of property by the courts.” Lavdim KRASNIQI, Director, the Kosovo Judicial Institute



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