

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (81) 15

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

ON THE RIGHTS OF SPOUSES

RELATING TO THE OCCUPATION OF THE FAMILY HOME

AND THE USE OF THE HOUSEHOLD CONTENTS ¹

*(Adopted by the Committee of Ministers on 16 October 1981
at the 338th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering the aim of the Council of Europe is to achieve a greater unity between its members, *inter alia*, by promoting the adoption of common rules in legal matters ;

Recognising that disparities still exist concerning the rights of spouses with regard to the family home and household contents between the laws of member states ;

Recalling its Resolution (78) 37 on equality of spouses in civil law ;

Recognising the importance of promoting such equality with regard to the occupation of the family home and the use of the household contents ;

Noting that in some states the rights of spouses relating to the family home and household contents are insufficiently protected ;

Considering that although legal and *de facto* equality between the sexes is being progressively achieved in the member states of the Council of Europe it is desirable to improve the legal situation of spouses with regard to the family home and household contents ;

Considering that the adoption by states of systems of co-ownership and co-leases of the family home is one of the means for strengthening the right of each spouse to occupy the said home while realising at the same time that such systems may not always sufficiently protect the right of occupation ;

Desirous of providing common rules to enable states progressively to improve the rights of spouses in this field,

Recommends governments of member states to secure the rights of spouses to occupy the family home and to use the furniture and other objects which are meant for the use of the family in the home by introducing legislation or adapting, where necessary, their legislation to comply with the principles set out in the appendix to this recommendation and to take into consideration the possibility of adopting systems of co-ownership and co-leases as one of the means for strengthening the right of occupation of the family home.

1. When this recommendation was adopted, and in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies :

— the Representative of France reserved the right of his government to comply or not with the principles set out in the appendix to the recommendation ;

— the Representative of the Federal Republic of Germany reserved the right of his government to comply or not with Principles 1, 2, 4 and 5, paragraph 2, of the appendix to the recommendation ;

— the Representative of Italy reserved the right of his government to comply or not with Principle 5 of the appendix to the recommendation.

Principles

A. Rights of spouses relating to the occupation of the family home

Principle 1 — Consent of the spouse

1. Any legal act by one spouse which might directly prejudice the right of the other spouse to occupy the family home must be carried out with the consent of the latter.
2. Where consent is unjustifiably withheld, or impossible to obtain, the authorisation of the court or other competent authority may be requested.
3. National legislation may provide for a system of registration of this right of occupation which ensures that this right is effective against third parties.

Principle 2 — Sanctions

1. Any act in breach of paragraph 1 of Principle 1 may, subject to paragraph 2 of Principle 1 and paragraph 2 below, be set aside or be subject to any other appropriate sanctions, when the right of occupation cannot be maintained.
2. The rights of bona fide third parties may be protected according to conditions laid down by national law.

Principle 3 — Breakdown of marriage

The right to occupy the family home may be assigned, in appropriate cases and according to the conditions laid down by national law, exclusively to one of the spouses in the case of a divorce or judicial separation.

Principle 4 — Surviving spouse

The surviving spouse shall have the right, in appropriate cases and according to the conditions laid down by national law, to continue to occupy the family home.

Principle 5 — Leases

1. Principles 1 to 4 shall also apply where the family home is held on leasehold by one of the spouses.
2. When the family home is held on leasehold by one of the spouses and this spouse does not discharge the obligations of a leaseholder, the other spouse shall have the right of continuing the lease by discharging these obligations.

B. The rights of spouses relating to the use of the household contents

Principle 6 — Consent of the spouses

Any act carried out by one spouse without the consent of the other spouse prejudicing the right of the latter to use the furniture and other objects which are meant for the use of the family in the home may be set aside, subject to any rights of bona fide third parties provided by national law, or this act may be subject to any other appropriate sanction.

Principle 7 — Breakdown of marriage

The whole or part of the said household contents may, in appropriate cases and according to the conditions laid down by national law, be assigned exclusively to one of the spouses in the case of a divorce or judicial separation.

Principle 8 — Surviving spouse

The surviving spouse shall have the right, in appropriate cases and according to the conditions laid down by national law, to be granted the whole or part of the said household contents.