

# Legal handbook for foreigners in Norway

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## Preface

Legal handbook for foreigners in Norway is produced by Jushjelpa i Midt-Norge. Jushjelpa i Midt-Norge are one of five legal aid centers run by students in Norway. Currently, the center consists of 23 employees, where all employees are advanced law students. Jushjelpa has been operative for 21 years, and has since the start had an increasing number of inquiries regarding legal disputes and information about legal rights. In 2011 we processed 1,630 individual cases. For comparison we have processed the same amount of cases by August 2012. Furthermore, we expect that the total number in 2012 will increase to around 2700 cases.

Jushjelpa provides free legal assistance and assists in legal processes for client groups who do not have access to legal assistance from other sources. In most cases we provide legal advice on issues relating to the legal position of the client, but we also act as representatives for clients in negotiation meetings, Conciliation court (forlikrådet), Rent Disputes Tribunal (HTU), and procedures in court when the dispute is regarding smaller monetary claims. In addition to legal work for clients, Jushjelpa also work with legal politics, providing information about legal rights and education. Our legal aid center has throughout 21 years of experience shown that advanced law students can provide excellent legal aid at a low cost.

The need for legal aid in the Norwegian society is huge. Because of economic, social or geographic reasons, many do not have an efficient access to necessary legal assistance. This means that many are cut off from claiming their rights. Jushjelpa i Midt-Norge was established to address this unmet legal need. Moreover, Jushjelpa i Midt-Norge, along with the other student legal aid centers, received the award "Rule and equality of law" (Rettsikkerhet og likhet for loven) given by The Norwegian Association of Lawyers (Norges Juristforbund) in 2012.

'Jushjelpa i Midt-Norge' believes that information of rights is a very effective and important form of legal aid. We think that, by enlightening vulnerable groups about their rights, more people will be prepared to handle a possible conflict and will be able to predict their legal position.

In 2012 'Jushjelpa i Midt-Norge' was granted project contributions from IMDI. The idea of the project was to make a handbook with information of rights, specially directed to foreigners. We were completely dependent on financial support to make the release. This handbook is fully financed with support from IMDI. We thank them for making this release possible.

We would like to thank Rakel Bjørge Aalberg and Janne Kristiansen, who have contributed with proofreading, translation and corrections.

We would also like to give special thanks to the employees at Jushjelpa i Midt-Norge, Even Gulbrand Larsen, Marie Amundsen, Eline Røphaug, Vegar Dalen and Ingrid Jeanine Pfister, who has written this book. We would like to note that any errors in the handbook should be addressed to the above mentioned by e-mail: [leder@jushjelpa.no](mailto:leder@jushjelpa.no). This process has been exciting, inspiring and at times somewhat extensive. We have actively used each other as tutors and we appreciate the collaboration.

We are hereby proud to present the legal handbook for foreigners in Norway.

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# Chapter 1

## Labour law

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## 1.1 Establishing contact between jobseekers and employers

NAV (The Norwegian Labour and Welfare Services) serves as an intermediary when it comes to creating contact between jobseeker and employer with the purpose of establishing a work relationship. NAV assists with the job seeking process, and you can also find information about vacancies at NAVs own web pages ([www.nav.no](http://www.nav.no)).

NAV arranges job seeking courses at a regular basis. By contacting your local NAV office, you can sign up for one of these courses. Here you can get tips on how to write your job application and also how to prepare for your job interview. You can choose to benefit from this offer or you can try to get in contact with employers on your own. You will find information about vacancies on [www.finn.no](http://www.finn.no).

Another option is to contact firms who specializes in employment, such as adecco, bemanningshuset, manpower and so on.

## 1.2 Working hours and employment

Employment is a contract between two parties, one being the employer and the other being the employee. The employee is entitled to such a contract in writing, regardless of duration and the positions percentage.<sup>1</sup> The contract shall among other things contain a work description, information about when the employment begins, time limits for terminating the employment, estimated duration if the employment is temporary, and the length and placement of the daily and weekly hours agreed upon.

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<sup>1</sup> Aml.§ 14-5

Before employment it is common to ask the job seeker to come to an interview. The employer can hire whoever he wants, but unjustifiable discrimination is still illegal<sup>2</sup>. Prohibition of discrimination means that the unemployed are protected against discrimination based on political views, membership of a trade union, sexual orientation or age. Discrimination on the basis of ethnicity, national origin, ancestry, color, language, religion or belief is also prohibited by the Norwegian Anti-Discrimination Act (diskrimineringsloven).

Furthermore, the main rule is that an employee is hired on a permanent basis. However, temporary employment is permitted if the nature of the work is unlike the work that is ordinarily executed at the work place.<sup>3</sup> This will typically apply for seasonal or project based work. Temporary employment as a temporary worker is also allowed if you fill in for another who is sick, on leave or on holiday. Temporary employment shall not be used as a norm, but shall rather be of a time-limited nature. If you have been hired temporarily for more than four years, you are entitled to be permanently employed. This rule does not apply to temporary employees in organized sport, or employees participating in work assessments and practice work.

Working hours will be determined in the employment contract, and shall not exceed 9 hours per 24 hours.<sup>4</sup> The employee is required to perform their work within the hours and the time of the day stated in the employment contract. You may only be required to work more than 9 hours if the employer has a particular and time-limited need for it.<sup>5</sup> If you are required to work overtime, you are entitled to at least 40% in addition to your regular salary.

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<sup>2</sup> Aml §§ 13-1 og 13-3

<sup>3</sup> Aml § 14-9

<sup>4</sup> Aml § 10-4

<sup>5</sup> Aml § 10-6

## 1.3 Hiring from agencies who specializes in employment

When hiring workers from agencies who specialize in employment, including adecco, bemanningsbyrået, manpower and so on, the same rules applies as when employing someone temporary.<sup>6</sup> Hiring workers from these agencies should not be used as a norm, but is only allowed if the conditions for temporary employment are met. These hired workers do not have a formal employment with the one who is hiring. It is the agency witch is these workers employer. According to current laws, hired workers from agencies doing the same job as the employees of the hiring employer are not entitled to the same salary. However, from 1 January 2013 the rules regarding hiring workers from agencies will change, so that these hired workers will be ensured the same terms as employees of the hiring employer, including equal payment. Prohibition against direct and indirect discrimination in the Norwegian Working environment act Chapter 13 applies accordingly for hired workers from agencies.

## 1.4 Probation

An employee, who is permanently employed, can be employed with a probationary period. If you are employed with a probationary period this has to be in writing in your employment contract. The purpose of probationary agreements is that the employer, for a limited period of time can assess whether you are suitable for the position or not. The length of the probation period may not exceed 6 months.<sup>7</sup> If the employee fails to adapt to the working place, or if the employee lacks competence or reliability, the employment may be terminated. The employee shall have been given a real opportunity to test themselves at the work. During this time the employer is obliged to ensure proper training. Employers must also take into account the employee's lack of former work experience. An employee, who is

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<sup>6</sup> Aml § 14-12

<sup>7</sup> Aml § 15-6(3)

employed on a given trial, can be fired on a 14 days' notice unless otherwise is agreed upon in writing.<sup>8</sup>

## 1.5 Salary

There is no statutory right to a minimum wage. However, a minimum wage may be set in collective agreements. The general protection against discrimination and the principle of impartiality applies here. The employer must have a legitimate reason to give you a lower salary than other employees in the company with equivalent qualifications. Seniority will be an example of legitimate grounds for differences in salary.

Initially, the employee only receives salary for the time he is at working disposal for the employer. Travelling back and forth from work or time spent on travelling in relation to work, is not considered working. However, the employment or collective agreement may differ from the initial rule.

The salary is generally paid in arrears. You are entitled to a salary statement showing the method of calculating the salary.<sup>9</sup> There are also limitations regarding an employer's ability to do deductions from the salary. If you are unlucky and cause damages in connection to work, the employer cannot require it replaced unless you caused the damage intentionally or negligently, and you acknowledge liability in writing or it is determined by judgment. The (skadeerstatningsloven) Norwegian law of compensation<sup>10</sup> states that an employer, without regard to who is to blame for the damage, is responsible for damage caused willfully or negligently during the employee's execution of his work.

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<sup>8</sup> Aml § 15-3(7)

<sup>9</sup> Aml § 14-15

<sup>10</sup> Skl § 2-1

### 1.5.1 Vacation and vacation pay

All employees are entitled to vacation whether they are working full or part time. You are entitled to vacation in a total of 25 working days within each vacation year.<sup>11</sup> The employer or representative at the work place shall discuss the determination of vacation dates with the employee in good time before the holiday starts.<sup>12</sup> You are entitled to vacation pay from the employer with 10.2% of the salary paid in the preceding year. Workers over 60 are entitled to additional vacation days and a higher rate when calculating the vacation payment.<sup>13</sup> There is no requirement to the employments length in order to be entitled to vacation pay. How much vacation pay you will receive is stated in the salary and tax statement from last year. Employers are obliged to send such a salary statement within February 1st on the year after the tax year. Vacation pay you have earned will be paid on the last normal payday before the holiday.<sup>14</sup>

### 1.5.2 Advice when salary is not paid

If you do not receive salary from the employer due to lack of willingness, you must first send a monetary claim with a deadline to deliver payment in one or two weeks. The letter should be sent by registered mail so that you can prove it was sent. It should also be written in the letter that you will proceed with the case if your requirements are not met by the deadline.<sup>15</sup> If your employer still does not pay or provide evidence that the salary is paid, you may appeal the case to the conciliation court to get a judgment. The appeal must generally be submitted to the conciliation court where the employer is located. You can get guidance on conciliation proceedings by contacting the relevant Conciliation near you. A judgment in your favor means that the claim can be enforced by enforcement authorities. However, if the employer does not have financial coverage, the claim cannot be enforced and you will then have to petition for bankruptcy.

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<sup>11</sup> Ferie § 5

<sup>12</sup> Ferie § 6

<sup>13</sup> The rate is at 12,5 % of the grounds of vacation payment.

<sup>14</sup> Ferie § 11 nr.1

<sup>15</sup> Tvisteloven § 5-2

### 1.5.3 How employees can turn an employer bankrupt

The employee may risk that the employer does not turn himself bankrupt even though he lacks the financial means to pay. You then have the opportunity to assure that the employer turns bankrupt. You must first send a claim demanding to be paid within a deadline. If the employer does not pay according to this demand, you must send a notice of bankruptcy which has to be served to the employer. This currently costs NOK 460, -. If your employer still does not pay according to the bankruptcy notice you will have to submit a bankruptcy petition to the court in the county where the employer is located. Employees can deliver bankruptcy petitions free of charge. The court can assist you with writing a bankruptcy petition. You may be forced to pay the employer's legal costs if bankruptcy is not opened. To open bankruptcy, the employer must be unable to pay, and this lack of ability to pay shall not be of a temporary nature. Employers are assumed to be unable to pay if he does not pay after receiving a demand and bankruptcy notice. It is the employer who has to prove that he is lacking the ability to pay.

### 1.5.4 The employers rights when facing bankruptcy

If the employer becomes bankrupt, the employee's claim is covered by the Government pay guarantee fund. The first thing to do is to report your salary claim to the trustee who administers the remaining assets of the estate. An application has to be filled out either from the web or by contacting the trustee. In addition, you must register as a job seeker with NAV within 14 days after you are notified that the estate does not enter into employment contract. The Government pay guarantee fund covers salaries and other work compensations for a maximum of six months.

Moreover, as a main rule the salary claim should not be more than four months overdue back in time before the due date. If the claim is regarding vacation pay the main rule is that it should not have been earned more than 24 months before the filing date. It is therefore important to react quickly when you learn of the bankruptcy. If your claim is approved, salary guarantee funds are transferred to the trustee. It may take up to 2 months before the application will be answered by NAV

salary guarantee. The trustee will then transfer the money to you, minus such as income tax.

If the application for coverage through salary guarantees are denied, this decision be appealed within 3 weeks from the time you received the rejection. The appeal has to be addressed to NAV wage guarantee.

## 1.6 Dismissal with notice

Employees and employers have a mutual right to terminate the employment. The work contract shall state the notice period of a dismissal. Unless otherwise agreed, a notice period of one month will apply.<sup>7</sup> The main rule is that the notice period starts on the first day of the following month after the notice of termination of employment is given. However, if the notice period agreed upon is longer than the notice period according to law, the notice period can be calculated from date to date if agreed upon. Such a calculation must be clearly stated in the work contract.

There is no need to give any reason for the termination. The employer must however have a valid reason for dismissal.<sup>16</sup> The termination of the employment can be because of reasons related to the company, employer or employee relationships. Restrictions at and because of changes at the work place, being late to work repeatedly and lack of adaptation to the work place may be justifiable reasons for dismissal. Reasons to terminate an employment have to be evaluated individually for the employee concerned.

The termination papers shall be in writing and delivered personally or by registered letter addressed to you.<sup>17</sup> The employer has no obligation to provide any grounds

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<sup>16</sup> Aml. § 15-7

<sup>17</sup> Aml § 15-4

for the dismissal, but if you demand it, you are entitled to know the grounds of termination. Before an employer chooses dismissal, it should if possible be discussed with the employee.<sup>18</sup>

If the employee chooses to terminate the employment, this should be in writing, but a verbal notice is also regarded as valid. However, it is you who has the burden of proving that the job is actually terminated. It is therefore to your advantage that the resignation is in writing.

If the employer does not oblige to the requirements in the law, you can claim compensation.<sup>19</sup> If you think the employer does not have a valid reason for dismissal, you can demand to negotiate<sup>20</sup> with the employer. Requirements for negotiations must be submitted in writing to the employer within two weeks after the dismissal took place. If this does not lead to a resolution of the dispute, you can get the issue of denunciation settled by the courts. It is important to act quickly, as there are different deadlines for when a claim must be filed. If you wait too long there is a risk that the claim lapses. If the employer's notice does not meet the formal requirements, there is no deadline for submitting lawsuits to court.<sup>21</sup>

## 1.7 Dismissal without notice

If an employee is guilty of major breaches of his duties, the employer may terminate the employment immediately.<sup>22</sup> A resignation shall also be in writing. You are in these cases not entitled to a notice. Examples of major breaches of duties is the refusal to work, harassment by the employer or other employees, breach of trust involved in the position, and if you commit a crime. It takes a lot before an employer can choose to dismiss you, and it is the employer's job to prove that he

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<sup>18</sup> Aml § 15-1

<sup>19</sup> Aml § 15-5

<sup>20</sup> Aml § 17-3

<sup>21</sup> Aml § 17-4(3)

<sup>22</sup> Aml § 15-14

has sufficient grounds for dismissal. If the reason for dismissal is regarded as improper, you can claim compensation.<sup>23</sup>

Dismissal by your own initiative may take place if there are unacceptable conditions on the workplace. Examples of such conditions are bad working environment, repeated violations of the provisions of the Norwegian Working environment act etc. Dismissal by your own wish should be in writing.

## **1.8 Requirements to get certifications**

When an employment ends, the employee is entitled to a certificate.<sup>7</sup> The certificate shall state your name, date of birth, what the employment has been about and its duration. Upon request, it shall also contain a more detailed description of you as an employee, if this is stated in the collective agreement or is regarded as standard practice in the business.

## **1.9 Right to acquire a new position**

An employee who is dismissed because of business conditions, such as cutbacks at the work place, has the right to get a new employment in the same business if there is a vacancy. Preferential rights apply to the position for which the employee is qualified. Preferential rights also apply for temporary employees and part-time employees, but not for the temporary worker. Employers are obligated to provide information on vacancies in the company.<sup>24</sup>

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<sup>23</sup> Aml § 15-14(3)

<sup>24</sup> Aml § 14-1

## 1.10 Rights when sick

When employees are sick they have the right to receive payment of sickness benefits for the time they were absent from work. To be entitled to sick pay you must have been employed for at least four weeks. Furthermore, you must be unable to work because of a decrease in functionality due to illness or injury. Work disability must be documented by a medical certificate.

If the disability is short term, you can use the self-certification. Self-certification means that you report the disability to the employer without presenting a medical certificate. Self-certification can be used for the first 16 calendar days of a sick leave. You must have worked at least two months for the employer before you can use self-certification. The employer may require that you submit a medical certificate if the absence lasts more than three days.

You cannot be dismissed because of absence due to illness or injury.<sup>25</sup> This protection against dismissal applies for the first 12 months after becoming unable to work. A dismissal in this period shall be presumed to have been caused by your absence if no other reason is made highly probable by your employer.

If you do not have a job, you are not entitled to sick pay. Loss of employment during this period may make you eligible to receive work assessment allowance. The requirements are that your ability to work is reduced by at least 50 % due to illness or injury.<sup>26</sup> Work assessment allowance is a total of 66% of the income you have had over the last year, or the average of the last three years.<sup>27</sup> NAV can also assist with work-related measures, medical treatment or by other means of follow-up.

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<sup>25</sup> Aml § 15-8

<sup>26</sup> FolketrygdL. § 11-5

<sup>27</sup> FolketrygdL. § 11-16

## 1.11 Rights when unemployed

If you are unemployed, you can apply for unemployment benefits from NAV. You must first register as a job seeker with NAV. In addition, you must be a job seeker and your working hours must have been reduced by at least 50%.<sup>28</sup> You can only apply for unemployment benefits a week before you become unemployed. Unemployment benefits are paid from at the earliest from the date you registered as unemployed and delivered an application. How much you get paid in unemployment benefits depends on how much you earned in the previous year or the average of the last three years before you applied for unemployment benefits. The grounds which is the most favorable will be the used by NAV, and will approximately be 62.4 percent of your previous income before taxes. You must have earned at least 1.5 times the basic rate of the Norwegian national insurance coverage the last calendar year before submitting the application.<sup>29</sup> If your application is denied, you can appeal the decision.

The right to unemployment benefit depends on how much you have earned before you applied. If you earned more than 2 times the basic rate of the Norwegian national insurance coverage the previous year or averagely the last three years, you are entitled to unemployment benefits for 104 weeks. If you earned less than 2 times the basic rate of the Norwegian national insurance coverage you are entitled to unemployment benefits for 52 weeks. Payment is stopped immediately if the unemployment benefits criteria's are no longer met.

## 1.12 Rights when laid off

If the business temporarily has to limit the operation, the employer may be able to lay off employees instead of terminating the employment. In the lay-off period you will be temporarily exempted from your duties, while the employer temporarily has

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<sup>28</sup> FolketrygdI § 4-3

<sup>29</sup> At 01.05.12 the basic rate of the Norwegian national insurance coverage was NOK 82122,-

no obligation to pay salary. However, employers are obliged to pay salary during the initial period after layoff. When being totally laid off or when at least 40% of your working hours is reduced, employers are obliged to pay salary for 10 days.<sup>30</sup> When the working hours are reduced with less than 40%, you are entitled to salary in a total of 15 days. When the need for expanding the business reemerges, you will resume your work.

Employers can only choose to layoff if the business limitations are considered to be temporary. If the period is considered to be of a permanent nature, layoffs cannot be used. In these cases, the employer must choose to terminate your employment, to ensure your right to a notice period. If you have been laid off, you can apply for unemployment benefits from NAV. You must first register as a job via the internet or at NAV. You must then fill out an application where relevant documentation regarding the layoff is attached. Before the layoffs take effect, you are entitled to a 14 days' notice. Layoffs shall as a main rule not last more than 6 months unless there is still a valid reason for layoffs.

## **1.13 Requirements for proper working environment and organizing**

One of the main purposes of the Norwegian Working environment act is to give employees a satisfactory working environment.<sup>31</sup> There are requirements that have to be met regarding both the physical and psychosocial work environment. It is the employer's duty to ensure that the working environment is safe.<sup>32</sup> Measures that ensure workers full protection against adverse effects must be put in place. Measures may include instructions, access to the firm's representative, the employee chosen to safeguard worker, and occupational health deals. If your ability to work has been reduced because of an accident, heavy work load, illness or other

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<sup>30</sup> Permitteringslønningsloven § 3

<sup>31</sup> Aml §§ 1-1 og 4-1

<sup>32</sup> Aml § 2-1

circumstances, the employer shall if possible take action and arrange for you to be able to keep your current position or be assigned other suitable work.

The requirement of a satisfactory working environment applies without any consideration to the company's financial position. You are entitled to report unacceptable conditions in the workplace without the risk of receiving reprisals.<sup>33</sup> However, your method of notification must be done in a proper manner. The agency shall arrange for internal notification of unacceptable circumstances. If conditions are suitable for internal reporting, for example through the representative at the work place, you must first notify internally, if this is considered appropriate. However, you always have the right to report to public authorities such as the Norwegian Labour Inspection Authority, the Norwegian Board of Health Supervision and the Norwegian Data Protection Authority.

If you've got your ability to work reduced as a result of accident, illness, heavy work load and so on, the employer shall, as far as possible, take the necessary measures to ensure that you are able to keep your position or get another suitable position.<sup>34</sup>

## 1.14 The Norwegian Labour Inspection Authority

The Norwegian Labour Inspection Authority can provide guidance on the Norwegian Working environment act, and follow up where the employer violates the law especially when it comes to the working environment. The Norwegian Labour Inspection Authority cannot resolve disputes of private law between employee and employer. Contacting the Norwegian Labour Inspection Authority is free of charge.

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<sup>33</sup> Aml §§ 2-4,2-5 og 3-6

<sup>34</sup> Aml § 4-6

## 1.15 A national citizen from a country outside the EEA-area <sup>3536</sup>

If you are a national of a country outside the EEA area and wish to work in Norway, you must, as a rule, hold a residence permit. First we will look at the skilled worker permit, furthermore, we will briefly look at the other residence permits.

### Skilled worker:

Furthermore the term skilled worker covers the following categories:

#### Specialist training corresponding to upper secondary education level.

You must have completed vocational training for a specific occupation. The education must as a minimum correspond to upper secondary education level, i.e. at least three years. If you were educated abroad, you must have achieved the same level of expertise as you would have achieved had you been educated in Norway. Examples include vocational education for joiners, plumbers or auxiliary nurses.

#### Craft certificate.

A craft certificate taken abroad must have resulted in the same level of expertise as a Norwegian craft certificate.

#### University college or university education.

The requirement is a completed degree or study programme. Examples include nurses, engineers, Bachelor or Master's degrees.

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<sup>35</sup> Direct copy from: <http://www.udi.no/Sentrale-tema/Arbeid-og-opphold/Arbeid-og-opphold-EU-EOS-EFTA-borgere/>

<sup>36</sup> Direct copy from: <http://www.udi.no/Sentrale-tema/Arbeid-og-opphold/Trenger-jeg-oppholdstillatelse/>

### Special qualifications.

You must have gained expertise through professional experience of a certain duration, alternatively in combination with other training (courses and similar). If there is a formal education in the field achieved through of such education. Please note that, in principle, a skilled worker permit is only granted on the basis of special qualifications in exceptional circumstances and that thorough documentation is required.

If you are an athlete and are to participate in top-level sports, or are to be trainer for top-level sports, there must be a statement from your club (your employer) regarding your competence and the level you are to participate on.

### More stringent competence requirement

The competence requirement for religious leaders/teachers and ethnic cooks have become more stringent. Religious leaders/teachers must, as a main rule, have a master degree or education on master level.

### Relevance

Your expertise must be deemed to be relevant to the position. This means that the position you have been offered must be of a nature that requires a qualified skilled worker. You must also possess the expertise in question.

### Approval/authorization requirement for regulated professions

If you are to work in a profession subject to qualification requirements (a regulated profession), you must have been approved or authorized by the relevant specialist authority for your profession. Health personnel, for example, must enclose an authorization or license from the Norwegian Registration Authority for Health Personnel (SAFH).

### Additional conditions – work through a recruitment agency

If you are to carry out skilled work through a recruitment agency, you must submit a list of the assignments that the client has already planned for you. The agency must also make clear that you are entitled to a salary relevant to your skills, also in periods when your employer might not have assignments for you. The recruitment agency must be registered in the Labour Inspection Authority's register.

### What requirements apply to the employment relationship?

You must have received a concrete offer of employment from an employer in Norway. The employment offer must state the position you will fill, your hourly wage and the number of working hours per week. The duration of the offer of employment must also be specified. As a rule, you must have received an offer of full-time employment for one employer.

The pay and working conditions must not be poorer than those stipulated in the current collective agreement or pay scale for the industry. If no such collective agreement or pay scale exists, the pay and working conditions must not be poorer than is normal for the occupation and place concerned.

If the position requires an academic education and is not covered by a collective agreement or pay scale, you must be paid in accordance with the collective agreement for Norwegian state employees, unless it is documented that other conditions are normal for the occupation and place concerned. This means that if you have completed higher academic education, for example hold a Master's degree, your pay must be at least salary grade 47 in the pay scale for Norwegian state employees, currently NOK 396.900 per year. For lower-level academic education, for example a Bachelor's degree, salary grade 42 in the pay scale for Norwegian state employees, currently NOK 368.000 per year, is the minimum pay.

In exceptional cases you can be granted a residence permit even though the employment offered is not continuous. In the assessment, it may be taken into

account whether the employment offered is not continuous due to the fact that you also work in another country, or are covered by a rotation arrangement in an international company. It may also be taken into account whether you are going to stay in Norway at least half the period your application concerns.

#### Researchers with own funds

You can be granted a residence permit in Norway as a researcher if you are to carry out research at a university, institute or similar and you can finance the stay with your own funds.

#### Service provider, seconded employees

Skilled workers who are employed by a foreign enterprise and who are to provide services in Norway can be granted a residence permit. Your foreign employer must have entered into a contract to perform services for a Norwegian enterprise.

#### Service provider, self-employed contractor

If you are a skilled worker who is going to provide services as a self-employed contractor, you can be granted a residence permit. You must be a self-employed person abroad and have entered into contract to provide services for a Norwegian enterprise.

#### International companies

If you are employed by an international company, several types of residence permits may be relevant. Please contact your nearest Norwegian embassy or consulate, the nearest police district or the UDI's Information Service.

#### Ethnic cooks

If you are going to work as a cook and prepare ethnic food, you need a residence permit as an ethnic cook. You must be a skilled worker on a high level as an ethnic cook. Your employer must be an ethnic restaurant and must, as a main rule, serve

food from one country only. In some cases, UDI can accept that the restaurant serves food from two or more countries. If you are going to work as a cook and not prepare ethnic food, you may apply for a residence permit as a skilled worker.

#### Newly qualified job seekers and researchers

Your purpose must be to seek employment as a skilled worker or specialist in Norway. You must be a researcher or newly qualified, have one of the following residence permits and apply before the permit expires:

- Student
- Norwegian studies for skilled workers
- Additional education/work experience
- Researcher with own funds

#### Norwegian language courses for skilled workers

If you are a skilled worker, you can be granted a residence permit to study Norwegian for a total of one year. You can be granted such a permit even if the purpose of the stay is to find employment in Norway

#### Additional education in order for your education to be recognized in Norway

If you are a skilled worker, you can be granted a residence permit for up to two years to take additional education, gain work experience or attend courses that you need for your education to be recognized in Norway.

#### Seafarers on board foreign ships

You can be granted a residence permit if you are employed on a ship registered abroad that carries cargo or passengers between Norwegian ports.

### Work on the continental shelf

If you are a skilled worker or a specialist who is going to work on the Norwegian continental shelf, you can be granted a residence permit. It is a requirement that you are going to work on a Norwegian or foreign fixed installation that is used on the Norwegian continental shelf.

### Athlete and trainer

If you are an athlete and are to participate in top-level sports, you can get a residence permit as a skilled worker. You can also get this kind of permit if you are to be trainer for top-level sports.

## **1.16. Is a residence permit necessary?**

If you are a national of a country outside the EEA area and wish to work in Norway, you must, as a rule, hold a residence permit. Here, you will find an overview of the groups that are exempt from the residence permit requirement.

### Skilled workers who are not subject to a visa requirement

If you are not subject to a visa requirement and have qualifications as a skilled worker, you can stay in Norway without a residence permit for six months to seek employment as a skilled worker or a specialist. You must report to the police in the place where you are staying no later than three months after your arrival in Norway, identify yourself and tell them that you are a job seeker.

If you are a jobseeker and have stayed in Norway for a period of more than 90 days, see "Requirements for nationals who are not subject to the visa requirement", you cannot travel to or stay in other Schengen countries than Norway. In this case, you cannot leave Norway via other Schengen countries.

If you leave Norway, your collective time in the Schengen area cannot exceed 90 days in a period of six months if you want to return to Norway.

If you held a residence permit in Norway, you must have been outside the Schengen area for at least 90 days before you can be a jobseeker in Norway.

However, you need a residence permit if you are seeking employment as a religious leader/teacher or an ethnic cook.

If you are subject to a visa requirement, you can not get a visa to seek employment in Norway.

#### Certain three-month employment relationships

If you do not have an employer in Norway, you can work here without a residence permit for up to three months if you belong to one of the following groups:

- Commercial and business travellers
- Technical experts who are to install, repair, perform maintenance etc. on machinery or technical equipment or provide information about the use of such equipment. The need for this labour must not exceed three months, and you or your employer must notify the police in writing before you enter Norway.
- Persons in private service accompanying persons who visit Norway
- Professional athletes and their accompanying support network
- Public servants paid by another country, by agreement between foreign and Norwegian authorities
- Journalists or other personnel on assignment for a foreign media institution
- Tour guides accompanying groups of foreign tourists during visits to Norway
- Staff on foreign trains, aircraft, buses or trucks

- Necessary security and maintenance crew on foreign-owned vessels laid up in Norway. You must notify the police.

If you have an employer in Norway, you do not need a residence permit for employment relationships of up to three months' duration if you belong to one of the following groups:

- researchers or lecturers
- religious preachers. The need for this labour must not exceed a period of three months.

Nor is a residence permit required if you are employed by an international company and are to undergo internal company training for a period of up to three months.

If you need a visa, you have to apply for a Schengen-visa (C-visa) to enter Norway.

#### Certain two-week assignments

If you are a performer, artist, musician or part of their necessary accompanying support staff, you do not need a residence permit for assignments that do not total more than 14 days during a calendar year. You or your employer must notify the police in writing before you enter Norway.

#### Market trading, one day per month

You do not need a permit to sell Russian products via market trading in Northern Norway for up to one day per month. You must be a Russian national from the Barents Region, and you must notify the police.

#### Diplomats

Diplomats do not need a residence permit to stay and work in Norway. More

information on diplomats and employees or persons on assignment for inter-governmental organizations, and their family members

### Nordic nationals

Nordic nationals do not need a residence permit to stay and work in Norway

### Certain categories of seafarers on board Norwegian ships

You do not need a residence permit to work on a Norwegian ship engaged in international shipping.

Norwegian fishing vessels that land their catches in a Norwegian port are not deemed to be engaged in international shipping.

Norwegian ships that pick up cargo or passengers in a Norwegian port and land the cargo or passengers in a Norwegian port are also not deemed to be engaged in international shipping. Such ships are, however, deemed to be engaged in international shipping if the ship falls under the Regulations concerning extended trade areas for cargo ships registered in the Norwegian International Ship Register or the Regulations concerning special trade areas for vessels and mobile offshore units engaged in the petroleum activity and registered in the Norwegian International Ship Register.

For Norwegian ships engaged in international shipping that call at Norwegian ports, there are special rules concerning permission to leave a position on board a ship and liberty, and concerning a duty to give notification.

If you do not fall under one of the above groups, you are subject to a residence permit requirement. What kind of residence permit you can apply for depends on the reason for your stay.

#### Certain categories of seafarers on board ships registered abroad

If you work on board a foreign-registered cruise ship or a foreign ship registered in a register of ships in an EEA country, you do not need a residence permit. This also applies to seafarers who are covered by bilateral shipping agreements.

If you are employed on board a foreign registered ship that carries goods or passengers between Norwegian harbors you will most likely need a residence permit. The ship must have operated regular or substantial activity between Norwegian ports. Activity for a continuous period of three months will be deemed to constitute regular or substantial activity. This period is not interrupted by up to two short trips or assignments in other countries totaling less than ten days.

There is no requirement for a residence permit for work on board ships registered abroad when the ship only occasionally operates between Norwegian ports, i.e. when it does not operate regular or substantial activity between Norwegian ports.

## **1.17 A national citizen within the EEA-area**

If you are a national citizen within the EEA-area, and got a valid ID-card or passport, you are permitted to stay in Norway for three months. This will also apply for the members of your family. Family members that not are national citizens within the EEA-area need a valid passport, and have to authenticate that they are a part of your household, or that you are providing them, for staying in Norway with you for this months.

National citizens within the EEA-area, does not have to seek for a residence permit. It is enough to go online to register. You also have to visit the nearest police station to show a valid ID-card or passport, and a proof of employment or an employment contract according to the labor law. If the terms of registration are being fulfilled you will get a registration certificate. You don't have to pay for this, and the registration certificate are valid for indefinite time. Nevertheless, the validity of the registration certificate will no longer exist if the terms are not fulfilled.

### Duty to report for job seekers

EEA nationals who are job seekers in Norway must register with the police within three months after entry. It is a requirement that you are registered as a job seeker with NAV. This requirement is for those who have previously been employed in Norway and are now unemployed ( lay-offs, illness, etc.). If you have not been employed in Norway before and you are now seeking employment, you only need to be registered at the police. You can also sign up as a job seeker through the online registration portal and then go to the police for ID control<sup>37</sup>. You then have the right to stay in Norway for six months. You will not currently receive a written confirmation that you are registered as a job seeker. Once you have a job, or other grounds for residence, you are obliged to register. You must then meet again at the police to show the documentation listed below:

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<sup>37</sup> Direct copy from: [//www.udi.no/Sentrale-tema/Arbeid-og-opphold/Arbeid-og-opphold-EU-EOS-EFTA-borgere/Midlertidig-registeringsordning-for-EOS-borgere/?id=10934](http://www.udi.no/Sentrale-tema/Arbeid-og-opphold/Arbeid-og-opphold-EU-EOS-EFTA-borgere/Midlertidig-registeringsordning-for-EOS-borgere/?id=10934)

# Chapter 2

## Tenancy act

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## 2.1 In general

Renting in this context is considered a temporary right to use all or a part of an estate in exchange of some sort of compensation<sup>38</sup>. A temporary usufruct means that you have the right to live in an apartment or a house for a specific amount of time. That this right of enjoyment is dependent on the exchange of some sort of compensation means that you pay money to stay in the apartment.

The landlord/landlady is the person who owns the apartment or house (also called lessor). The tenant (or lessee) is the person who lives in the apartment for a period of time in exchange for him paying money.

This usufruct (right to reside there) must always be based on an agreement between the lessor and the lessee. The agreement can be either oral or written. Such an agreement can be called lease agreement or lease.

## 2.2 Different types of leases

In the Norwegian tenancy act (Husleieloven) there is a distinction between time definite and indefinite contracts.

A time definite lease agreement is when the lease lasts from one date to another. As an example from 1 January 2012 to 1 January 2015. The general rule in Norwegian law is that time definite agreements shall not be of a shorter amount of

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<sup>38</sup> Husleieloven § 1-1.

time than three years<sup>39</sup>. This rule is not absolute, and in some cases there may be a lesser amount of time<sup>40</sup>.

Time definite contracts are often also irrevocable. That the contract is irrevocable means that tenants do not have the option to cancel (terminate) the agreement during the rental period. You are therefore required to pay rent for the entire lease period. If a contract is irrevocable, this must be stated in writing in the contract<sup>41</sup>. If this is not informed of, the rental contract will be revocable (you can cancel the contract during the lease period).

A time indefinite lease agreement has no termination date. In other words, it is not agreed upon what day the tenant's right to use the property ends.

## 2.3 You may request to have a written contract

Even if you have entered into an oral contract with the landlord, you are always entitled to demanding a contract in writing<sup>42</sup>. The landlord is also entitled to demand that you have a written contract.

If the landlord does not give you a written contract when you demand it, you can request a judgment (handed down by the courts). Verbal agreements are as valid as written, but it is always an advantage to have the contract in writing. This if disputes between landlord and tenant arises.

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<sup>39</sup> HusII. § 9-3.

<sup>40</sup> HusII. § 9-3 first section.

<sup>41</sup> HusII. § 9-2 first section second sentence.

<sup>42</sup> HusII. § 1-4 second sentence.

## 2.4 The landlord cannot dispense of the Norwegian tenancy act if it is bad for you

The landlord can never decide things in the contract that weakens your legal position compared to the Norwegian tenancy act<sup>43</sup>. The Norwegian tenancy act is thus indispensable in the sense that you cannot state terms in a contract that gives you inferior rights compared to the Norwegian tenancy act. As an example, this means that the landlord cannot decide that the rent can be increased every six months, because the Norwegian tenancy act does not allow it<sup>44</sup>.

You are however allowed to contract terms that strengthen your legal position compared to the Norwegian tenancy act. As an example it is allowed that the contract states that the rent will decrease as time goes by.

## 2.5 Duties of the landlord

A duty is something you are bound to do or something you must do. Both parties (both landlord and tenant) have different obligations when renting. The main duty of the landlord is to make sure that the rental object is at your disposal.<sup>45</sup> This means that the landlord cannot deny your right (to use) the property that you have agreed that you will be renting. Nor can the landlord in any way limit your use. If you have agreed that you will have a private bathroom, he cannot later demand to use it for himself.

The second duty of the landlord is that the apartment should be in the same condition as agreed<sup>46</sup>. This means that if it is agreed that the apartment is newly

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<sup>43</sup> Husll. § 1–2 first section.

<sup>44</sup> Husll. chapter 4.

<sup>45</sup> Husll. §§ 2–1 first section and 5–1 first section.

<sup>46</sup> Husll. § 2–2.

renovated with a new kitchen, fresh paint on the walls and a new bathroom, the landlord has not fulfilled his duties if the bathroom and the kitchen is not refurbished. However, you are free to agree upon what the condition of the apartment should be.

The one who rents out a property also has a duty to maintain calm conditions and order at the property<sup>47</sup>. This means that the landlord cannot put in place measures that are disruptive to the tenant, while he is obliged to intervene when other users are disruptive to the lessee.

Moreover the landlord has an obligation of maintenance<sup>48</sup>. A duty to maintain means a duty to take care of the items so they are not destroyed. The landlords' obligation of maintenance applies to both the apartment and the property around it. The landlords' obligation of maintenance includes everything that does not belong to the tenant's maintenance obligation. What this involves will be explained further under section that describes the tenant's obligations.

## 2.6 The tenant's obligations

### Paying the rent

Your main duty as a tenant is paying the rent. The rent you pay is the amount stated in the rental agreement. If you do not pay this rent, you risk among other things that the landlord can terminate the contract.

Most often the rent is paid once per month, but you are free to agree otherwise.

Under Norwegian law, there are strict rules as to which other amounts than the rent the tenant is obligated to pay<sup>49</sup>. It cannot be agreed upon or required that the

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<sup>47</sup> Se Husll. § 5-2.

<sup>48</sup> Husll. § 5-3 first section.

<sup>49</sup> Husll. § 3-7 first section.

tenant shall pay a higher amount than what is stipulated in the contract. Otherwise it can only be demanded or agreed upon that the tenant pays for electricity, firewood or similar fuel and water<sup>50</sup>, monetary deposit<sup>51</sup> or provide a guarantee<sup>52</sup>. Thus, the landlord cannot in addition to the rent demand payment for anything other than what is mentioned. For example, if television and internet is included in the rent, it must be included in the rent. Furthermore, the landlord cannot charge a fee for the creation of a contract.

If it is agreed or the landlord requires other payments besides from the rent like electricity, monetary deposit or guarantee, you always can claim this money plus interest<sup>53</sup> on late payments to be returned to you<sup>54</sup>. The interest accrues from the date the amount was paid.

#### Treating your apartment with care and in accordance with the agreement

According to the Norwegian tenancy act<sup>55</sup> the tenant shall treat the apartment with what is called "due diligence" and otherwise in accordance with the agreement. "Due diligence" means that you must take into account that it is someone else's property you are using. You should avoid damage to the property, and if this occurs, you must notify the landlord of the damages.

Moreover, the tenant shall treat the apartment according to what is agreed. This means for example that if it is decided that music not be played aloud after 23.00, the tenant must accept this.

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<sup>50</sup> Husll. § 3-4.

<sup>51</sup> Husll. § 3-5.

<sup>52</sup> Husll. § 3-6.

<sup>53</sup> Husll. § 3-7 last section.

<sup>54</sup> Husll. § 3-7 second section.

<sup>55</sup> Se Husll. § 5-1 annet ledd.

### Obligation of maintenance

The tenant and landlord may agree upon what the tenant's maintenance obligation includes<sup>56</sup>. If it is not agreed in the leasing agreement, the tenant's obligation of maintenance includes:

- Door locks
- Taps (the water tap in the sink as an example)
- Toilet
- Electrical sockets and switches (for example, power sockets, and light switches)
- Boiler
- Furniture and equipment that are not part of the real property (for example objects that can be connected to the sockets; stove, TV and washing machine)

As a tenant, you must also inspect, clean, replace batteries and test the smoke alarms and fire extinguishing equipment.

If you have not agreed otherwise with the landlord regarding maintenance obligations, this list is final. All other maintenance is then the landlord's own job.

## **2.7 Expanding the household and sublease**

According to the Norwegian tenancy act the tenant has the right to include his spouse or his cohabiting partner, their children and their parents<sup>57</sup>, the spouse's / cohabiting partner's children and parents in the household. The tenant also has the right to include their foster children. To include someone into the household means

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<sup>56</sup> Husll. § 5-3 annet ledd.

<sup>57</sup> Husll. § 7-1.

that the person is allowed to stay there with you. The landlord cannot require more rent or refuse any of those mentioned to move in with you.

When including others than those mentioned above, the landlord's approval is required. The landlord can only refuse to give his approval if the apartment is clearly overcrowded or if there is conditions regarding the person that provides a valid reason to refuse. Such a valid reason could be that this person interferes with the order of the house or there is good reason to believe that the person is going to damage the property. Nationality, language, ethnicity, skin color, and political position is never a condition regarding the person that can serve as a valid reason.

Sublease is when you as a tenant rent out the rented property to a third party. Your original lease with your landlord is called the main lease. If you sublease, you will be called the main tenant. The person you sublease to is called the subleasing tenant.

The main rule of the Norwegian tenancy act for subleasing<sup>58</sup> is that the consent of the landlord is required. This rule can be waived if otherwise is agreed, or if another law says otherwise. If you have a time definite rental contract, you have a stronger protection in regards to sublease and termination of the rental contract.<sup>59</sup> The tenant can sublease for the remainder of the lease period with the approval of the landlord. If the landlord refuses to approve the sublease without conditions regarding the tenant providing a reason for it or the apartment is overcrowded, the tenant may terminate the agreement with a notice of three months<sup>60</sup>. In the same way as when including people to the household a valid reason is where there is reason to fear vandalism, noise and damage to property.

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<sup>58</sup> Husll. § 7-2.

<sup>59</sup> Husll. § 7-5.

<sup>60</sup> Husll. § 7-5 last sentence according to. § 9-6.

When subleasing you are responsible of the subleasing tenant when dealing with the landlord. However, you can demand reimbursement of the amount of money you have paid on behalf of another if the tenant is to blame for the breach of contract. This means that the landlord can demand a compensation for damages the subleasing tenant is responsible for from you, while you later can demand this from the subleasing tenant.

## 2.8 Breach of contract

Where the rental object is not in accordance with the contract, or it is not in normal good condition unless otherwise agreed, there will be a breach in contract, or a deficiency<sup>61</sup>. Likewise, there is a deficiency unless otherwise agreed, and:

- a) the property is not "*suitable for the purposes similar housing is commonly used for, or*"
- b) the property is not "*fit for the particular purposes for which the tenant under the agreement was meant to use the property for unless the circumstances show that the tenant did not consider the landlord's expertise or assessment, or had reasonable grounds to do so.*"

Furthermore, there may be a deficiency if the landlord has given you incorrect information<sup>62</sup> or withheld information<sup>63</sup> about the tenancy. This means that there is a deficiency if the landlord says that the rental object has two bedrooms, while in reality it only has one bedroom.

If there is a defect, you must complain<sup>64</sup> to the make the deficiency real (demand a reduction in rent, compensation, correction, etc.) To complain in this context means that you inform the landlord of the defect as soon as possible after you've

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<sup>61</sup> HusII. § 2-2 first section.

<sup>62</sup> HusII. § 2-3.

<sup>63</sup> HusII. § 2-4.

<sup>64</sup> HusII. § 2-8.

discovered it. For example, if you notice that there is mold and dampness in the apartment, you must give the landlord notice of this as soon as possible.

If you do not complain within a reasonable time after you discovered or should have discovered the defect, you lose your right to make the deficiency real. This means you have to endure that there is a deficiency with the apartment. Within a reasonable time is considered to be different from case to case, but it means that you must have a sufficient amount of time to understand the extent of the defect.

When there is a defect and you have complained on time, you can demand that the defect shall be corrected<sup>65</sup>, demand a reduction in rent<sup>66</sup>, terminate the contract<sup>67</sup>, demand compensation<sup>68</sup> or withhold paying rent<sup>69</sup>.

### Correction

Correction means that you can demand that the landlord's by his own expense shall correct the defect. If there is mold in the apartment, you can therefore demand that the landlord implement measures to get rid of this.

You can not demand correction if the costs are unreasonably high or it is unreasonably difficult to conduct corrections for the landlord. In such cases, you must demand a reduction in rent or compensation instead.

### Rent reduction

You can demand a reduction in rent both when there is a defect and a delay. Delay

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<sup>65</sup> HusII. § 2-10.

<sup>66</sup> HusII. § 2-11.

<sup>67</sup> HusII. § 2-12.

<sup>68</sup> HusII. § 2-13

<sup>69</sup> HusII. § 2-15.

means that you are not able to dispose of the leased object at the time agreed upon.

As long as the property has a defect, you can demand a reduction corresponding to the conditions between the object when it has a defect and the object as it was meant to be according to the contract.

### Terminating the contract

To terminate the contract means that the contract ceases immediately. This means that your responsibilities as a tenant (including paying rent), and the landlord's duty to make sure the property is at your disposal will cease.

The requirement is that there is a *significant* deficiency. This requirement is strict, and it requires a lot before you can terminate a contract. What is regarded as a significant deficiency is determined individually, and this is a conditional decision. One must determine whether there is a significant deficiency on the basis of the defects size and quality, as well as its importance for you as a tenant.

## **2.9 When tenancy is terminated and ceases – rescission**

Time definite rental contracts are terminated on the date the contract expires as previously explained.

If you are still living in the rental object during the time after the tenancy is ended, the contract will transform into a time indefinite contract unless the landlord has sent an eviction notice to you within three months after the contract expired<sup>70</sup>.

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<sup>70</sup> HusII. § 9–2 third section.

If the lease is time indefinite termination will be the most common reason for the tenancy to cease.

The general rule is that the notice period is three months from the end of a calendar month. Easier explained this means that the deadline is three months with the addition of time to the next month. As an example this means that if you or the landlord chooses to terminate the tenancy on the 4 of August 2012, the notice period will last until the 31 of December 2012.

However, it may be agreed upon a different notice period in the leasing contract.

Both the tenant and the landlord must uphold the contracted notice period or the main rule of three months, unless otherwise agreed upon. The parties are still bound to their duties during the notice period. Even if you move out before the notice period is over, you still have to pay rent in the notice period.

When the landlord chooses to terminate the contract, the notice of termination has to fulfill strict formal requirements.<sup>71</sup> The notice of termination must first of all be in writing. This requirement is not met by sms or e-mail.<sup>72</sup> The notice of termination shall also state the grounds of why the landlord is terminating the tenancy. Specific termination reason are required, and according to the Norwegian tenancy act this may be<sup>73</sup> 1) the property shall be used as a residence by the landlord himself or any member of his household, 2) that the property must be vacated due to demolition or conversion of the property, 3) that the tenant has breached the lease or 4) that there is another valid reason to terminate the lease. It is not very strict conditions for where valid reasons is to be, it is enough that there is a specific and acceptable reason, for example, that the landlord is selling the apartment.

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<sup>71</sup> Husll. § 9-7 first section.

<sup>72</sup> Wyller, Christian Fr. (2009): *Boligrett* 5. utg. s. 358.

<sup>73</sup> Husll. § 9-5.

Finally, the notice of termination shall also state that you as the tenant has the right to object to the termination. It should further state that you must protest in writing within one month after receiving the notice, and that if you do not object within this period you lose your right to demand that the termination is invalid and the landlord may then request eviction by force.

If any of the formal requirements are not met, the notice of termination is considered invalid.<sup>74</sup> This means you can ignore the notice and continue to live there. If the landlord gives you a new notice which is consistent with the formal requirements, the notice period starts from when you received it.

However, you must be aware that if you move out in accordance with an invalid notice of termination, it is considered to be accepted, and then you cannot claim that the notice of termination did not follow the formal requirements of the Norwegian tenancy act later on.<sup>75</sup>

If the notice of termination is valid, you have the opportunity to object to the termination if you think that the reasons for terminating are incorrect. As mentioned, you can protest to the landlord in writing within one month after the notice is received.<sup>76</sup> If you object within this period, the termination ceases unless the landlord has filed suit within three months after your deadline to object has expired (one month after you received the notice). If the case goes to court, the court shall determine whether the dismissal was illegal and whether it should be set aside.<sup>77</sup> If the case goes to court, it will most often involve that the landlord files a complaint to the conciliation court or rent disputes tribunal (see [www.htu.no](http://www.htu.no)).

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<sup>74</sup> Se Husll. § 9-7 tredje ledd.

<sup>75</sup> Husll. § 9-7 third section second sentence.

<sup>76</sup> Husll. § 9-8

<sup>77</sup> Husll. § 9-8 second section.

The tenancy can also cease in other ways than by termination. A rental contract can be rescinded from the tenant's side if there is a substantial breach of contract.<sup>78</sup>

The fact that a lease is rescinded means that the duties of the parties ceases immediately. Furthermore, this means that the landlord no longer is obliged to make sure that the rental object is at your disposal, meaning that you can no longer demand to live there. Among other things, this involves that your duty to pay rent ceases.

To rescind the contract is considered as a serious infringement of the agreement, and shall be considered as a last resort. If you can be helped, for example, by a deficiency (failure or breach of contract) being corrected, or by being granted a price reduction, this makes it more probable that you cannot demand rescission.

The condition for rescinding the agreement is that the breach of contract is substantial. Breach of contract means that as an example the landlord has not acted according to contract.

The fact that it has to be a substantial breach of contract means that the requirement to rescind from the contract is strict. The starting point has to be the importance of the defect for the tenant and the landlords' knowledge of this. This means that something may involve that you have the right to rescind, while it does not give others any rights. If you inform the landlord upon concluding the tenancy, that the rental object has to be on one level because you're in a wheelchair, and it later turns out that there are two floors and stairs in the apartment, this may give you the right to rescind. If the landlord states that the apartment is on one level to a person that does not have any particular significance for because he or she is fully functional and not handicapped, this will not give this person the right to rescind.

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<sup>78</sup> HusII. § 2-12

If you as the tenant want to rescind from the contract, you must give the landlord a notice of rescinding. There are no requirements on how such a declaration shall be, but to secure yourself this should be in writing. You should also be aware that if you rescind without the breach of contract being considered as significant, the landlord may be entitled to rent afterwards (compensation).

The landlord may also rescind from the agreement<sup>79</sup>. The breach of contract by you as a tenant must also be significant. A significant breach of contract is present from the tenant only when:

a) *the tenant significantly breaches his or hers contract by not upholding the duty to pay rent or meet other requirements stated in the lease.*

It is not enough that the tenant pays the rent too late, and therefore misses a payment on the rent. The breach of contract has to be substantial, and if it is established a monetary deposit account, it is usually required lot before the landlord can rescind from the agreement. As an example, if the monetary deposit covers three months of lease, the landlord cannot rescind before lacking three months of rent payments.

b) *the tenant after having received a written notice from landlord substantially neglects the duty of maintenance or continues to act in a manner that causes serious damages or annoyance to the landlord, property or other users.*

There is here a requirement of written notice from the landlord before the contract is rescinded. The notice shall specifically indicate what conditions the landlord demands to cease (stop), so you as the tenant has an opportunity to correct this.

c) *the tenant without having the right to do so totally or partly allows the use of the property to others despite having received a written notice from the landlord does not bring the relationship to an end*

This applies if you as an example have subleased without the landlord's approval where this is required.

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<sup>79</sup> HusII. § 9–9.

*d) the tenant without having the right to do so uses the property in any manner or for any purpose other than agreed on and despite receiving a written notice from the landlord does not bring the relationship to an end*

This must be determined on the grounds of what is stated in the contract. For example if you have rented an apartment for residential purposes, the landlord may rescind if the apartment is used as a restaurant.

*e) the tenant otherwise breaches his contracted duties in a way that makes it necessary to bring the lease to an end*

This includes as an example, cases where the tenant is physically attacked the landlord, or that the property is used for drug dealing.

If the landlord is to rescind the agreement, the letter of rescinding must be in writing<sup>80</sup> and the reason for rescinding must be stated.

## **2.10 Returning the apartment – rights and obligations when the leasing ceases**

When the lease is ended, either by termination, that the contract period is over or that the agreement is rescinded, you have to move out and return the apartment to the landlord if you are a tenant.

The date the tenancy is terminated (ends) the tenant shall make sure the rental object with its accessories is available for the landlord's disposition<sup>81</sup>. Unless you have agreed otherwise, the rent object is returned when keys are given to the landlord and he has otherwise been given unhindered access to the property.

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<sup>80</sup> HusII. § 9–9 second section.

<sup>81</sup> HusII. § 10–2 first section.

When the property is returned by the lessee the housing shall be clean and otherwise in the same condition as it was when you received the property<sup>82</sup>. The landlord cannot require that the tenant does anything with what is called normal wear and tear. This means that the landlord cannot claim that the tenant shall replace or repair worn floors and similar that you will have to expect over time.

When it comes to what condition the property shall be in, what duty of maintenance you have agreed upon with the landlord as a tenant is of importance.

## **2.11 Municipal housing – housing for the disadvantaged**

According to Norwegian law<sup>83</sup>, the municipality shall contribute to housing for disadvantaged people who find it difficult to find housing, or when there are other factors that make it difficult to get a place to live. The municipality hands this responsibility over to NAV.

### 2.11.1 Who is considered as disadvantaged?

According to the Norwegian tenancy act<sup>84</sup> the disadvantaged are people who need assistance to obtain housing because of:

1. Poor Economy
2. Disabilities
3. Health or social problems
4. Poor knowledge of the Norwegian housing market
5. Or similar conditions

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<sup>82</sup> Husll. § 10-2 second section.

<sup>83</sup> Sosial services in the Norwegian Labour and Welfare Administration act of 2009 § 15.

<sup>84</sup> Husll. § 11-1 first section.

*"Or similar conditions " includes many groups of people. This includes refugees, welfare clients, former prisoners (people who have been in prison) and people with disabilities.*

### 2.11.2 What rules apply when you live in a home for disadvantaged?

It has been previously explained about the rules applicable to ordinary rental agreements. In the Norwegian tenancy act<sup>85</sup> there are specific rules on housing for the disadvantaged. These are considered as exceptions to the general rules on tenancy. An exception is a rule that says the opposite of the general rule.

The rule about housing for the disadvantaged in the Norwegian tenancy act<sup>86</sup> gives the landlord a stronger protection than for regular tenancies. As an example this means that many of the rules that restrict the landlord's right to terminate the agreement or the subleasing (tenant rents to another person) do not apply to housing for the disadvantaged. However, it must be written in the lease that it is meant as housing for the disadvantaged, and if the landlord (can be the municipality) should have a stronger protection, the exceptions they wish to use, has to be written in the agreement. The provision applies to homes that the state, county or municipality owns or rents for this purpose.

### 2.11.3 How to apply for housing for the disadvantaged

The rules and conditions to get granted a house for the disadvantaged varies from municipality to municipality. You must contact the municipality you live in, so they can help you with the application process.

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<sup>85</sup> The Norwegian law of tenancy agreements of 1999.

<sup>86</sup> Husll. § 11-1.

## 2.12 Forced eviction

### 2.12.1 In general

In some cases, the landlord may have the right to evict the tenant from the property. In such situations, the landlord can use forced eviction. Forced eviction means that you get the help of the Enforcement office to implement his right to evict a person. The Enforcement office is a public authority that has the right to use force to implement legal demands that you may have.

### 2.12.2 In what circumstances can the landlord evict you using forced eviction?

The landlord must have enforceable grounds to be able to evict you. Enforceable grounds are divided into general and specific grounds of enforcement. The difference between these two grounds is that when there is a specific ground the landlord is required to send a notice before he can demand that the tenant leaves the property.

General grounds of enforcement<sup>87</sup> are judgments from a Norwegian court, or other decisions that have the same effect as a judgment. Other decisions taken by other Norwegian authorities other than the court, is enforceable when it has the effect of a judgment. This could be a decision by the conciliation court or rent dispute tribunal. Meanwhile, settlement and in some cases decisions of foreign courts serve as grounds of enforcement. Court settlement is when two parties come to an agreement before the courts or other authorities pronounce a verdict.

This means that if the landlord has a judgment on you to move out, he may require the Enforcement office to force you to move out of the apartment.

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<sup>87</sup> The Norwegian enforcement act (tvangsfullbyrdelsesloven) § 4–1.

Moreover, there are special grounds of enforcement<sup>88</sup> for making someone leave the property. The first special ground of enforcement is the clause of eviction. Such an eviction clause exists when you have a *written* contract of tenancy where it is written that forced eviction happens when the rent is not paid. As previously mentioned, therefore such eviction must be notified<sup>89</sup> before the landlord can demand this. Such a notice shall be in writing and may, at the earliest, only be sent when the rent can be required (due date).

The landlord may also have an eviction clause in the contract in the event that you do not move when the lease has ended<sup>90</sup>. Also in a case like this it must be *written* in the lease. However, the landlord first has to send an eviction notice<sup>91</sup> if it has been more than three months since the contract expired. Again you need the landlord to send a notice that forced eviction will be used.

Moreover, the landlord has an enforceable ground when the tenancy is terminated and you have not moved when the notice period ends<sup>92</sup>. If the lease is terminated by your landlord, you will however have a right to object on the termination<sup>93</sup>, and if you have done so the landlord is unable to get help from the Enforcement Office to evict you. Also in this case, the landlord must send a notice before you can be evicted.

Finally, the landlord has the right to demand forced eviction when it is *obvious* that there are circumstances that give him the right to rescind the rental contract<sup>94</sup>. To rescind the contract means that the landlord terminate the contract immediately due to substantial breach of contract by the tenant. A substantial breach of contract occurs when you as the tenant has avoided paying rent for a long time, destroy or

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<sup>88</sup> Tvangsl. § 13-2 third section.

<sup>89</sup> Tvangsl. § 4-18.

<sup>90</sup> Tvangsl. § 13-2 third section letter b.

<sup>91</sup> Husll. § 9-2 third section.

<sup>92</sup> Tvangsl. § 13-2 third section letter c.

<sup>93</sup> Husll. § 9-8.

<sup>94</sup> Tvangsl. § 13-2 third section letter d.

do not maintain the apartment, leave the use of the apartment to others who are not entitled to it, or when you use the apartment in a way you are not allowed to according to the contract, or in another way violate the contract in a serious manner<sup>95</sup>. In these cases, the landlord also has to send a notification.

The fact that the landlord only can require forced eviction when it is obvious that he can rescind the contract means that it has to be an obvious and serious breach of contract from the tenant.

### 2.12.3 What do you do when you receive a notice of forced eviction?

If you receive a notice of forced eviction, you can always object. An objection means that you state that there are no grounds for forced eviction. You have to deliver an objection within the deadline. Such a deadline is 14 days.

However, there is a distinction between the forced eviction of general grounds of enforcement and special grounds of enforcement. If you are forced to leave your property because you as an example have received a judgment of having to do so (general grounds of enforcement), there are only two objections you can state. The first is that the grounds of enforcement are not the result of a judgment or other general grounds of enforcement. The second objection is that the grounds of enforcement (such as the judgment), has a content that does not make it clear that the verdict states that you have to move from the rental object<sup>96</sup>.

There is also a requirement that if you want to object to forced eviction because of general grounds of enforcement, the objection has to be related to circumstances or events that have occurred too late for it to be informed about when the case has received a decision by the court.<sup>97</sup>

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<sup>95</sup> Husll. § 9–9.

<sup>96</sup> Tvangsl. § 4–2 first section letter b.

<sup>97</sup> Tvangsl. § 4–2 second section.

If you are forced to evict from your apartment because of a special grounds of enforcement, it is easier to object. You can here state any objections that could have been stated in a lawsuit<sup>98</sup>. As an example, an objection can in such a situation be that you disagree that you have to move.

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<sup>98</sup> Tvangsl. § 4-2 third section.

# Chapter 3

## Consumer sales

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## 3.1 Consumer sales

Consumer sale applies to buying and selling goods when you buy something as a private individual and the seller acts in a commercial venture<sup>99</sup>. If you buy something from a private individual, or another private individual buys something from you, different rules will apply. The same goes for purchases between two professional parties.

In consumer sales most problems occur when there is something wrong (a defect) with the goods they bought, for instance that the seller delivers the wrong goods, the goods is broken, or it is delivered to late. As an example you can imagine buying a remote control for a TV which does not work. You will then have the right to for example make a claim of remedy, cancellation of the contract, price reduction and/or compensatory damages due to the defect or delayed delivery.

It is important to be aware of the fact that you cannot make such claims if you knew about the defect when you purchased the goods<sup>100</sup>.

## 3.2 What do you do when you receive defective goods?

According to the consumer sale law (forbrukerkjøpsloven), the goods are first of all defective if they do not match the species, quantity, quality, other properties and packaging requirements following the contract of purchase<sup>101</sup>.

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<sup>99</sup> Forbrukerkjøpsloven § 1 second section.

<sup>100</sup> Fkjl. § 16 third section.

<sup>101</sup> Fkjl. § 16 first section letter a jf. § 15 first section.

*“Unless something else follows the contract of purchase, the goods shall<sup>102</sup>:*

*a) fit for the purposes for which goods of the same type are normally used as*

For instance, if you cannot use a mobile phone to make calls, it will not be fit for the purposes for which goods of the same type are normally used.

*b) respond to what the consumer has reason to expect from the purchase of such a thing when it comes to durability and other properties*

If a mobile phone stops working after half a year, it will not respond to the expectations that a consumer has reason to have when it comes to durability. However, the important thing is what you as a consumer have reason to expect.

*c) fit for any particular purpose which was made known to the seller or a particular purpose which the seller in any way had to know, if the seller accepted this purpose or the consumer would otherwise have had reasonable grounds to believe in the seller's expertise and assessment*

If you tell the seller that you need a camera that can be used to take pictures under water, and it turns out that this is not possible, there will be a defect.

*d) have the properties which the seller has shown to by providing a sample or a model*

*e) be packaged in the usual manner or in another proper way necessary to preserve and protect the goods*

*f) comply with the requirements of the public law at the time the purchase is concluded, unless the consumer intends to use the goods in such a way that the claim is irrelevant*

*g) be free from any third party's right to the goods, such as ownership or lien. Likewise, the goods shall be free of third party claims to have rights tied to the goods, except when the claim is clearly unfounded.*

This applies, for example, when the seller has sold the thing twice (to two people).

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<sup>102</sup> Fkjl. § 15 (our translation).

If the goods are not in accordance with letter a) to f), there is a defect<sup>103</sup>.

Furthermore there is a defect if<sup>104</sup>:

- the seller at the purchase has failed to provide information about the goods or its use which he or she should know about, and the consumer had reason to expect to get, if failure to provide this information is likely to have influenced the purchase. This includes events where the seller is withholding information about the goods from you. It is a requirement that this information has influenced the purchase, which means that you must prove that you would not have made the same purchase on the same terms (for example, paid as much if you had all the information).
- the goods does not match the information the seller in his marketing or otherwise has given about the goods or it's use, unless the seller does show that the information is distinctly corrected before the purchase, or that the information has not influenced the sale. This applies in cases where the seller has given you incorrect information about the goods.
- necessary information about installation, use, care and storage is not included along with the goods. This applies to situations where there are errors in the manual.

Once you've acquired the goods, it may not be in the condition that was agreed on beforehand. The first thing you need to do in such a case is to notify the seller. This is called a notice of defect<sup>105</sup>. There is a deadline to make a claim, and it is important that you notify the seller as quickly as possible; otherwise you might lose your right to a remedy for defective performance. According to the law you have to give notice within a reasonable time after you discovered the fault or defect, or within a reasonable time after you should have discovered it. This time limit is never less than two months from the date you actually discovered the defect. This means that "within reasonable time" can never be a shorter period of time than two months from the date you discovered the defect. Furthermore, the absolute

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<sup>103</sup> Se Fkjl. § 16 first section letter a jf. § 15.

<sup>104</sup> Se Fkjl. § 16 first section letter b–d.

<sup>105</sup> Fjkl. § 27.

deadline for notice of defect is two or five years from the date you acquired it. Five years is the time limit in cases where the goods are supposed to last considerably longer than two years. For example, this applies to mobile phones. One can also imagine that it applies to diamond jewelry.

There is no requirement that you specify which remedy for defective product you demand. It is sufficient that you give the seller notice about the defect<sup>106</sup>.

If you have given notice in time, you will have several claims for defective product to assert against the seller<sup>107</sup>. Firstly you can demand that the defect gets corrected or that you receive a flawless product<sup>108</sup>. You may in this case choose between the seller repairing or somehow fix the defect, or to obtain a replacement (new item). However, you cannot choose between repair and a replacement if the execution is impossible or the replacement inflicts the seller with unreasonable costs. For example, if you bought a pair of shoes that cost approx. 1300 NOK and a replacement (new product) will cost approx. 500 NOK for the seller, while the correction will cost approx. 50 NOK for the seller, you cannot demand to have a new item<sup>109</sup>.

The seller may demand to correct the defect or give you a new item. If the seller uses this right, you cannot demand a price reduction or cancellation the agreement. The seller may not demand more than two attempts to correct the same defect or deliver new product. You can also request a replacement product at your disposal if the repair takes more than a week. This is the general rule, but this is not a claim you can make if the expenses it will cause the seller is not reasonable in relation to the need you have for the item.

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<sup>106</sup> *Kjøpsrett* 2005 Viggo Hagstrøm p. 187.

<sup>107</sup> Fkj. § 26.

<sup>108</sup> Fjkl. § 29.

<sup>109</sup> Rt. 2006 s. 179.

Moreover, you can claim a reduction in price if the product is defective<sup>110</sup>. This claim can only be made if the seller has not corrected the defect or given you a new item. The price reduction shall be set to the ratio of the item's value in incomplete and contractual condition. This must be estimated individually in each case.

You can also terminate the agreement if there is a defect<sup>111</sup>. This is the most invasive response to a defect, and the condition is therefore that the defect is not insignificant. To determine whether the defect is insignificant, one must perform an assessment. One must consider, for example if one could be helped by a correction or a price reduction. One should also consider the disadvantages the buyer must bear if he must sit with the item.

If you cancel the agreement you must give the goods back to the seller (as far as this is possible – if the goods have been demolished due to the defect, this does not hinder your right to cancel the agreement). The seller is then obliged to give you your money back.

If you've had any financial expenses associated with the item's defect, you can claim compensation<sup>112</sup>.

In cases where the item is defective<sup>113</sup> and you've only paid part of the purchase price before you have received the goods, you can also hold some of your money back. You cannot hold back too much, just what gives adequate security for the claim. It is considered as a breach of contract if you hold back more than you have right to.

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<sup>110</sup> Fkjl. § 31.

<sup>111</sup> Fkjl. § 32.

<sup>112</sup> Fkjl. § 33.

<sup>113</sup> Fkjl. § 28.

### 3.3 What do you do when you do not receive your item on time? (Delay in performance)

Delay occurs when the goods are delivered too late according to the contract or when it is not delivered at all<sup>114</sup>.

If the delay is not due to circumstances on your side (buyer), you can inter alia held back payment, claim fulfillment, claim compensation or have a right to cancel the contract.

If you choose to withhold the purchase price<sup>115</sup>, you cannot withhold more than that it gives adequate security for the claim, in the same way as in questions regarding defect.

Fulfillment of the purchase may only be required when there is not an obstacle that the seller cannot overcome, or if fulfillment does not cause so big expenses or disadvantages for the seller that this is in unbalance with your interest in fulfillment<sup>116</sup>. You will lose the right to demand fulfillment if you wait too long time to promote your claim.

You can also terminate the contract if your purchase is delayed<sup>117</sup>. If you wish to terminate the contract there are certain criteria which have to be fulfilled. First of all the delay must be significant. If you have received the goods, the demand for

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<sup>114</sup> Fkjl. § 19.

<sup>115</sup> Fkjl. § 20

<sup>116</sup> Fkjl. § 21

<sup>117</sup> Fkjl. § 23

termination must be made within a reasonable time after you got what you purchased. Again you cannot wait very long before you notice the seller that you want to terminate the contract.

When evaluating whether the delay is significant, you have to consider the importance of the delay for the buyer. It is also important what kind of goods the purchase apply, and if it was meant to be delivered at a certain time<sup>118</sup>. For example, if you are ordering catering to a party that will take place on a particular day, and the food did not arrive until the next day, the delay is of great importance to you as a buyer and can give you the right to terminate the purchase.

If you suffer a financial expenses as a result of the delay, you can also claim compensation<sup>119</sup>.

### **3.4 The cooling-off period act**

When you, as a consumer, make your purchase outside of ordinary sales premises, the Cooling-off Period Act applies (angrerettloven). If you make a purchase in ordinary sale premises you are subject to the stores own rules regarding withdrawal from an agreement<sup>120</sup>.

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<sup>118</sup> Fkjl. § 23 second section.

<sup>119</sup> Fkjl. § 24.

<sup>120</sup> Angrerettloven § 1

The cooling-off period act gives the consumer a right to return goods, or withdraw from a service agreement. The professional party, the seller, has to give the consumer information regarding the purchase and service agreements<sup>121</sup>.

The seller also has to inform the consumer about his rights after the cooling-off period act. This information should be given when the agreement is made, and latest when the goods is delivered.<sup>122</sup> If the consumer wishes to exercise his rights he need to notify the seller within 14 days of receiving the goods and the required information. This notification should be written.

If the consumer has made a service agreement, the cooling-off period begins when the agreement is confirmed. The cooling-off period can be extended to three months after receiving the goods if the information is not in accordance with the law, or one year if the seller has not given any information about the cooling-off period act<sup>123</sup>.

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<sup>121</sup> Angrerettloven §§ 7 og 7a

<sup>122</sup> Angrerettloven § 9

<sup>123</sup> Angrerettloven § 11

# Chapter 4

## Immigration law

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## 4.1 Family immigration

The rules on family immigration apply in all cases where a foreigner has to apply to stay in Norway. <sup>124</sup> When applying on these grounds the applicant can apply for a permit to stay because they have a spouse, partner, child or other family member in Norway. The Directorate of Immigration (UDI) will also consider whether there are strong humanitarian considerations which indicate that an application should be granted. We will henceforth address the most common permissions to stay when applying for family immigration.<sup>125</sup> This chapter is divided into two parts. The first part is about family immigration after the general regulations. Part two concerns EEA-citizens after the special regulations.

### GENERAL REGULATIONS:

#### 4.1.1 Spouses

If you are married or are in a partnership<sup>126</sup>, you have the right to a family immigration permit if the following conditions are met:

- The sponsor (the person living in Norway) must be either Norwegian or a Nordic citizen who resides or will reside in this country, or,
- a foreigner with permanent residence in this country, or,
- a foreigner who is or will be legally residing in the kingdom with a valid permit to stay, which can serve as grounds to apply for a permanent residence permit, or,
- a foreigner with a residence permit according to the Norwegian law of immigration § 34 when the system of collective protection has not yet ended,
- both parties must be over 18 years.

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<sup>124</sup> The Norwegian law of immigration (utlendingsloven).

<sup>125</sup> Utl. chapter.6, from §§ 39–53 determines the various permit grounds.

<sup>126</sup> This is not stated explicitly in the law, but from the Norwegian law of Marriage §§1 og 95.

If the applicant has been married before, he or she has to prove that the marriage is dissolved. If such documentation cannot be provided as required by law, the applicant or the sponsor has to attach a statement explaining why the applicant cannot deliver the required documentation.<sup>127</sup>

Furthermore, if the applicant is applying because he or she has a spouse or a partner residing in Norway, the couple is required to live together. If this requirement cannot be met because of special circumstances, the law states that there can be made exceptions from the requirement. Examples of such special circumstances are where the couple spends a lot of time apart from one another because one of them is working in the North Sea.

#### 4.1.2 Pro forma marriages

An application for a residence permit may be denied if it appears likely that the main reason for marriage was to get a permit to stay in Norway.<sup>128</sup> The immigration authorities have the responsibility<sup>129</sup> of proving that the marriage is pro forma if both parties claim that the marriage is real. It is obviously that not easy for the immigration authorities to come to a conclusion where the main purpose of marriage is to acquire grounds for residence in Norway.<sup>130</sup>

#### 4.1.3 Abuse or exploitation of foreigners

Moreover, a permission to stay is denied if an applicant does not have a child with the sponsor and have not lived in an established relationship<sup>131</sup> with the sponsor

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<sup>127</sup> RS 2010–120

<sup>128</sup> Utl. § 40, section four.

<sup>129</sup> The requirement of proof is dependent on the requirement of general probability.

<sup>130</sup> Ex: NOU page 228 lists various assessment factors that the immigration authorities use. It is important to be aware that this list is neither final nor ranked.

<sup>131</sup> The parties must have lived together for a period of some duration, stated in Ot.prp.nr.109 (2005–2005)

abroad or in Norway if it is most likely<sup>132</sup> that the applicant or his children from an earlier relationship<sup>133</sup> will be abused or exploited.<sup>134</sup>

#### 4.1.4 Bigamy/Polygamy

If the sponsor receives a permit to stay in the kingdom after marrying several spouses, only one of the spouses can get a residence permit.<sup>135</sup> If the reference person already is married to a person who is residing in the kingdom, the applicant does not get a permit to stay according to the Norwegian law of foreign affairs § 40.

Finally, a permit is denied if it is most likely that the former spouses intend to continue living together.

#### 4.1.5 Requirements for the sponsor

The term “sponsor” means the person that the applicant wishes to be reunited with or establish family life with. The sponsors’ residence permit has great significance for the applicants permit to stay on grounds of family, including the conditions that apply to your particular/their situation.

#### 4.1.6 The requirement of four years of work or education in Norway<sup>136</sup>

The sponsor must have been working or studying for four years in Norway according to the Norwegian law of foreign affairs § 40 a.<sup>137</sup> Residency permits for cohabiting couples wanting to start a family and permits to stay with the intention to get married is also regulated by this law.

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<sup>132</sup> The requirement of proof is also here dependent on the requirement of general probability.

<sup>133</sup> Children from an earlier relationship meaning children that a person has with someone other than their current partner (spouse, cohabiting partner or boy/girlfriend).

<sup>134</sup>Utl § 40, section five.

<sup>135</sup>Utl § 40, section six.

<sup>136</sup>Utl. § 40a

<sup>137</sup> It is not required that the employment or education has been continuous according to Ot.prp.nr 26.s.11 and the Immigration Regulations § 9–1 first paragraph.

The Norwegian law of foreign affairs § 40 letter a, apply for the reference person who has:

- asylum,<sup>138</sup>
- permit to stay after entry permit as a transferring refugee,<sup>139</sup>
- collective protection in a mass exodus,<sup>140</sup>
- residence permit on grounds of strong humanitarian considerations or a special connection to Norway,<sup>141</sup>
- residence permit as a family member, or<sup>142</sup>
- permanent residency because of one of the aforementioned permits.<sup>143</sup>

Nevertheless, the requirements of four years of work or education does not apply if the marriage entered into or the parties conceived a child before the sponsor entered Norway, or where the parties married or conceived children in Norway while they both had a residence permit.

Here too, UDI will consider whether it should be made exceptions from the requirements if special circumstances, including the consideration of the family unity, indicate this.<sup>144</sup>

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<sup>138</sup> Utl. § 28

<sup>139</sup> Utl. § 35 section three.

<sup>140</sup> Utl. § 34

<sup>141</sup> Utl. § 38

<sup>142</sup> Utl.§§ 40–53

<sup>143</sup> Utl § 40 a letters a–e, according to § 62

<sup>144</sup> Ot.prp. nr. 26 (2008–2009) section 7.4.2 states that: "Special reasons' would include cases where Norway is obliged to grant exemptions from the condition to avoid that a decision is in violation of our international obligations, but it will also include some other cases. In cases where there are special circumstances, there must always be a subjective assessment and evaluation of the European human rights art. 8"

#### 4.1.7 Providing and housing

In order for your family to get a family permit, there is a requirement that the person living in Norway can provide for the family members who are applying for family immigration.<sup>145</sup> The requirement to provide for the family does not apply to those who have been granted asylum, or who meet the requirements for protection against refoulement.

The sponsor must prove that he or she has secured assets equivalent to 88 percent of salary grade 19 in the state's regulation of salary for the duration of the application. Examples of this are:<sup>146</sup>:

- Salary,
- sickness benefit, maternity benefit, parental benefit, disability or retirement pension according to the Norwegian law of national insurance,
- pension or other regular periodic benefits except benefits according to the Norwegian law of social benefits,
- benefits according to the Norwegian law of Introduction,
- student loan or scholarships, or a combination of these.

The requirement for future pensions is also considered to be secured when the sponsor receives age pension or disability pension when summarized is at least equivalent to the minimum pension.<sup>147</sup>

Nevertheless, the requirement for future income can also be secured by others than the sponsor.

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<sup>145</sup> UtI. § 58, jf. UtI. §§ 10-7 – 10-12.

<sup>146</sup> UtI. § 10-8

<sup>147</sup> 1 of May 2012 the basic rate of the Norwegian national insurance coverage was 82 122 NOK.

Examples of this are:

- If the applicant is working legally in the kingdom, the applicants own income shall also be included.
- If the sponsor is studying, this applies for higher education only, and furthermore has earned at least 60 student points, and has completed at least one year of the prescribed study, the applicants own funds shall be included. Another requirement here is that both parties are at least 23 years.

Nevertheless, the requirement can be secured by a third party's financial guarantee. This does not apply when the applicant is the sponsors spouse or partner, or the applicant will marry the sponsor after entering Norway.<sup>148</sup>

#### 4.1.8 Exceptions from the requirement of future income

An exception from the requirement of future income applies in the following examples:

- a) The applicant is a spouse, partner or child<sup>149</sup> of the sponsor who has been granted a residence permit on grounds of asylum<sup>150</sup> or because of collective protection.<sup>151</sup> If the applicant is the sponsors' spouse, it is also a requirement that the marriage was entered into before the sponsor entered Norway.
- b) The applicant is the child<sup>152</sup> of the sponsor who has a residence permit because of being the victim of trafficking,<sup>153</sup> or has been a witness in a case of human trafficking,<sup>154</sup> or has been granted a permit to stay because

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<sup>148</sup> Uf. § 10 –8, third section, letter c.

<sup>149</sup> According to § 40, § 41 or § 42 first or second section.

<sup>150</sup> UtI. § 28

<sup>151</sup> UtI. § 34

<sup>152</sup> UtI. § 42 first or second section.

<sup>153</sup> Uf. § 8.3

<sup>154</sup> Uf. § 8–4

of strong humanitarian considerations according to the Norwegian law of foreign affairs.<sup>155</sup>

- c) An applicant referred to in subparagraph a or b when the sponsor has been granted a permanent residence permit after receiving such prior residence basis as mentioned respectively in subparagraph a or b. If the applicant is the sponsors' spouse, it is a requirement that the marriage was entered into before the sponsor entered Norway.
- d) The sponsor is a child under 18.
- e) The applicant is a child under 15 years old without people to take care of him in his home country.<sup>156</sup>

In order to get an exception from the requirement of future after letter a to c, it is a requirement that the application must be filed within one year after the sponsor was granted a residency permit. Nevertheless, one can submit an application after the one-year deadline if the applicant has been unable to submit an application at an earlier date due to circumstances beyond the applicant's control.

#### 4.1.9 The requirement of former income<sup>157</sup>

In addition to having to meet the requirement of future income, you must also prove that you had a registered income equivalent to 88 percent of salary grade 19 in state's regulation of salary in the last tax settlement. There is also a requirement that the sponsor has retained income at a sufficient level in the period after the tax settlement.

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<sup>155</sup> UtI. § 38

<sup>156</sup> UtI§50, uf § 9–8

<sup>157</sup> Uf. § 10–9

There are exceptions to the requirement to document according to the tax settlement if the sponsor is:

- a Norwegian citizen
- a Nordic citizen
- or a foreigner with a permanent residence permit, who has been working abroad and can document that they have had an income equivalent to 88 percent of salary grade 19 in state's regulation of salary.

4.1.10. exceptions to the requirement of previous income in the first paragraph in the following cases:

- a) The sponsor is a Norwegian national, Nordic citizen or foreigner with a permanent residence permit, who has a higher education (college or university) in Norway or abroad and who has earned at least 60 student credit points, or equivalent, or studied at a vocational school in Norway at the equivalent of one year's normal study.<sup>158</sup>
- b) The sponsor has served mandatory military service or mandatory civilian service.
- c) The sponsor has had a tax registered net worth of over 1 million NOK in the last two tax settlements and is over 23 years of age.
- d) The sponsor was in a situation referred to in the Norwegian Immigration Regulations § 10 –8 second section.
- e) The sponsor has a permit as a skilled worker on the grounds of competence<sup>159</sup> or as a service provider, self-employed contractor.
- f) The sponsor has a residence permit that cannot form the basis for a permanent residence permit.<sup>160</sup>

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<sup>158</sup> UDI (utlendingsdirektoratet) can provide you with more guidelines.

<sup>159</sup> Utlf. § 6–1

<sup>160</sup> Utlf. § 9–6

#### 4.1.11 The requirement of housing

The requirement of housing applies in cases where lone parents with children over 18 years in Norway apply for a permit of residency, or where parents apply for a permit to stay a shorter period of time to visit children in the kingdom. It is also required to provide housing for applicants who apply for a permit to stay as engaged or family immigration in other cases under the Norwegian law of Immigration § 49.

The requirement of housing is considered as fulfilled if the foreigner is in disposal of a house, flat, bedsit or similar that meets government requirements. If the housing is rented the renting contract must be submitted which is approved by either the landlord, housing association or another person in control of the property.

UDI will also assess whether there are strong humanitarian considerations that demand that the requirement of housing lapses.

#### 4.1.12 When having received social services from NAV

There is a requirement that the sponsor must not have received financial support according to the Norwegian law of Social Services in the last twelve months before being granted a permission to stay.<sup>161</sup> If you are unsure please contact your local NAV office. There are also some laws that provide exceptions concerning social benefits.<sup>162</sup>

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<sup>161</sup> Uf. § 10-10

<sup>162</sup> Uf. 10-10 , second section.

#### 4.1.13 Exceptions due to particularly strong humanitarian considerations

In all cases, UDI will consider making exceptions from the requirement of subsistence if due to particularly strong humanitarian considerations.<sup>163</sup>

## 4.2 Cohabiting in a relationship

An applicant who has lived in a permanent and established cohabitation for at least two years with the sponsor<sup>164</sup> has the right to a residence permit when the person intends to continue to live together.<sup>165</sup>

If the applicant has not lived in a permanent and established cohabitation with a sponsor<sup>166</sup>, he or she is still entitled to a residence permit if the parties have children together, and they intend to continue the relationship. Nevertheless, this does not apply if the child was conceived before the time the sponsor entered into the realm, or the child was conceived while both parties had a residence permit in Norway.

It should be noted that if all or part of the prior cohabitation has taken place in Norway, both parties must have legally resided in the kingdom for the cohabitation period to be included according to § 41 first section. The parties cannot earn time as cohabitants if one or both parties are married to another.<sup>167</sup> Except from where there is a final decision on separation. If the separation happened abroad, it must be recognized by the County Governor.<sup>168</sup>

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<sup>163</sup> Uf. § 10–11.

<sup>164</sup> Utl § 40, first section.

<sup>165</sup> Utl § 41, first section.

<sup>166</sup> As mentioned in § 40, first section.

<sup>167</sup> Uf. §9–2

<sup>168</sup> According to the Norwegian law of recognizing separations and divorces from abroad.

It can also be made exceptions from the condition that none of the parties must be married at the time of the decision, if the parties has or are expecting children together, and there is a final decision on separation.<sup>169</sup> The same rules for recognition of the decision by the County Governor also apply here.

### **4.3 Continued residence on an independent basis<sup>170</sup>**

A foreigner who has a residence permit on the grounds of a spouse or partner can get a new residence permit application on an independent basis if cohabitation is terminated because of the applicant's death or that cohabitation has ceased, and there is reason to believe that the foreigner or a child has been abused in cohabitation relationship.

In addition, it may be granted a residence permit application if the foreigner as a result of cohabitation will have unreasonable difficulties in their home country due to social and cultural factors there.

You can also get a residence permit if proceedings are brought by the Marriage Act § 16 section three or § 23 section three.<sup>171</sup>

### **4.4 Residence permits for children less than 18 years**

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<sup>169</sup> El. § 20

<sup>171</sup> Ekteskapsloven §§ 16 and 23

Children who are less than 18 and not married or cohabiting, has the right to family immigration with their parents.<sup>172</sup> The same applies if there is only one parent who has a residence permit in Norway. If the sponsor has sole parental responsibility, this rarely creates any problems. However, the other parent must consent, if custody is shared. If consent is impossible to obtain, or there are other valid reasons explaining why a permit should be granted, the immigration authorities will make a subjective assessment and hereafter consider whether permission should be granted.

This applies similarly to children under 18 who are adopted by foreign law, or will be adopted according to the Norwegian law of adoption. Consent must be given by the Norwegian Directorate for Children, Youth and Family Affairs (Bufdir) before the child has entered the kingdom.

An applicant who is a child under the age of 21 without a spouse or partner, and is supported by a foreigner who is a national citizen of a state which has accepted the European Social Charter of 18 October 1961, has the right to stay in the kingdom when both parents has a residence permit as mentioned in § 40, first paragraph.

## **4.5 Where and how to apply**

Before you start the application process, you should figure out if you can apply while you are in Norway or if the application must be delivered from your home country.

If you can apply from Norway, you can submit your application here if you've had a different kind of residence permit for the past nine months. You can also apply from Norway if you are a skilled worker, a citizen or are a family member of an EEA

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<sup>172</sup> Utl. § 42

national with the right of residence in Norway. UDI has a separate guide on the internet to see if you are eligible to apply for family immigration from Norway. See: <http://www.udi.no/Sentrale-tema/Familieinnvandring/Kan-jeg-levere-soknad-om-familieinnvandring-fra-Norge/o/>.

If you must apply from abroad, you must submit your application at a Norwegian embassy or consulate. Some places it is Swedish or Danish embassies who will accept the application. UDI also has a own page stating where to submit your application, see: <http://www.udi.no/Sentrale-tema/Fellessider/Hvilken-ambassade-skal-jeg-levere-soknaden-om-oppholdstillatelse-til/>

You must register your application online if you apply from Norway, or through a Norwegian embassy. You cannot register your application online if there is a Swedish or Danish embassy who receives your application.

Here is the link to register your application online, see:  
<https://selfservice.udi.no/no/>

If you must submit your application at a Swedish or Danish embassy, fill out the application form on paper and deliver it to the embassy. The application form can be found here: <http://www.udi.no/Oversiktsider/Skjemaer-og-maler/Soknadsskjemaer/Skjemaer-for-familieinnvandring/>. The form shall also be used when applying to renew a license.

#### What to enclose with the application

Whether you search online or paper, you must submit your passport and other necessary documentation.

If you apply online, you can simultaneously order an appointment to deliver the documents to the police or a Norwegian embassy / consulate.

If you apply on paper, you need to contact the embassy to find out when you can deliver the documents and application forms.

Once you've visited the police station or the embassy and provided your passport and other necessary documentation the application is formally received. UDI will then start to process your application.

In addition filling out and delivering the application, there is a lot of documentation that must be enclosed in the application. The requirements of documentation are different for each country. UDI has an overview of the different countries and their documentation requirements. see: <http://www.udi.no/Sentrale-tema/Familieinnvandring/Sjekkliste-familieinnvandring/>

### Authority

If you want someone to have full access to your case and to be able to speak with UDI on your behalf, you must give that person authority to do so. Without authorization no one will be, not even the person you are applying for a family immigration with, able to get detailed information about your case from UDI.

### Interview

If you apply for a family immigration permit as a spouse or partner, it is generally a requirement that the person living in Norway has been interviewed by the police. This applies when the marriage or cohabitation is established abroad after the person living in Norway already has settled here. This requirement has been introduced to clarify whether marriage or cohabitation between you is entered voluntarily. The requirement for an interview does not apply if:

- you are married to the person living in Norway, and he or she was interviewed before you got married, or
- you are among those who does not need a visa to enter Norway or
- the person living in Norway had turned 25 when the marriage was entered into or

- the person living in Norway has been granted a residence permit as a skilled worker or specialist, or
- you have lived together in an established relationship while both have had a valid residence permit in Norway.

UDI can make exceptions from the interview requirement if there are special circumstances for this.

## The special regulations

### **4.6 Permit to stay according to the rules of EEA**

If you are an EEA citizen and have a valid identity card or passport, you have the right of reside in Norway for three months. The same applies to your family members who are EEA citizens. Family members who are not EEA citizens must have a valid passport and be able to document that they are a part of your household or that they are dependent on you, to be able to stay with you in Norway during these months.

Citizens of EU/EEA/EFTA countries are not obligated to apply for a residence permit, but they can register electronically online. Additionally, you have to go to the nearest police office after entering the country. The police will require that you present a valid identity card or passport and proof of employment or a contract of employment which in compliance to the Norwegian law of working environment. If the conditions for registration are met, you will be issued with a certificate of registration. You do not pay for this, and the certificate of registration is valid indefinitely. Nevertheless, the validity of the certificate of registration is no longer valid if the conditions no longer are met. This means that if the grounds you were

given a permit because of change or cease to exist, such as being an employee or a student; you no longer meet the conditions for residency.

#### 4.6.1 Family members of EEA nationals<sup>173</sup>

There are three different schemes for you who are a family member of an EEA national that lives in Norway (the sponsor).

The three schemes are:

- The registration scheme for EEA nationals.
- Family immigration with an EEA national for applicants who are not EEA nationals themselves (the residence card scheme)
- Family immigration

### **1. The registrations scheme for EEA nationals**

Registration requirement for EEA nationals is an arrangement there EEA-citizens can stay in Norway and for example work without a residence permit, as long as they register with the police. It is the police who administer this arrangement.

You can move to Norway and start working or looking for work straight away. The person living in Norway does not have to document income corresponding to 88 percent of salary grade 19 in the pay scale for Norwegian state employees, but he or she must be established in Norway, meaning that they are an employee, self-employed, a service provider, a student or have sufficient funds. Thereafter, the processing time is brief. You need not pay any application fee.

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<sup>173</sup> Text taken directly from: <http://www.udi.no/Norwegian-Directorate-of-Immigration/Central-topics/Family-immigration/test/>

You can register independently or as a family member of an EEA national living in Norway. Five years after you registered for the first time, you can apply for a permanent right of residence

It is also important to notice that after this option, you don't have any rights described to the Introduction law.

Short summary:

- You can move to Norway and start working or looking for work straight away
- The person living in Norway does not have to document income corresponding to 88 percent of salary grade 19 in the pay scale for Norwegian state employees, but he or she must be established in Norway, meaning that they are an employee, self-employed, a service provider, a student or have sufficient funds
- Short case processing time
- No application fee
- You can register independently or as a family member of an EEA national living in Norway
- Five years after you registered for the first time, you can apply for a permanent right of residence
- You do not have the rights described in the Introduction law

## **2. Family immigration with an EEA national for applicants who are not EEA nationals themselves (the residence card scheme)**

You can either choose whether you want to go to Norway to apply for a residence card here, or if you want to submit an application to an embassy in the country where you live. While waiting for the answer to your

application, you have the right to work in Norway, provided that you meet these requirements:

- You are a family member of an EEA national who lives in Norway, and you have a genuine relationship
- If you are an employee, self-employed, a service provider, a student or have sufficient funds
- You have a valid passport

#### Applying from Norway

If you do not need a visa, you can travel into Norway straight away. If you need a visa, you hand in an application for a visitor's visa (Schengen visa) at an embassy in the country where you are at the moment. You must hand in documentation of your relationship with the EEA national and documentation of the basis of their right of residence (meaning documentation that he or she is an employee, self-employed, a service provider, have sufficient funds or is a student in Norway). As a family member of an EEA national who have a right of residence in Norway you have, as a main rule, the right to a visa, a right to a prioritized processing of your application and you do not have to pay a fee.

When you come to Norway, sign the application for a residence card online. At the same time, you make an appointment to deliver the attachment to your application to the police.

#### Applying from abroad

If you wish to apply from your home country or another country where you are staying, you must fill out an application form. You can find the application form here:

<http://www.udi.no/PageFiles/17606/ENGELSK%20SKRIVBART.pdf>.

You personally hand in this form at an embassy/consulate together with your passport and necessary documentation. Please contact the embassy in advance to find out when you can hand in the application.

#### What must be enclosed with the application?

Look here for checklists with information about what documents to hand in with your application: <http://www.udi.no/Norwegian-Directorate-of-Immigration/Central-topics/Family-immigration/Check-lists/Checklists-for-family-members-of-EEA-nationals/>

#### Short summary:

- You can move to Norway and start working or looking for work straight away, as long as you fulfill certain requirements.
- Short case processing time, with the exception of complex cases
- No application fee
- The person living in Norway does not have to document income corresponding to 88 percent of salary grade 19 in the pay scale for Norwegian state employees, but he or she must be established in Norway, meaning that they are an employee, self-employed, a service provider, a student or have sufficient funds.
- Five years after you got a residence card for the first time, you can apply for a permanent right of residence
- You do not have the rights described in the Introduction law
- If you wish, you can apply for a family immigration permit at a later time, if you fulfill the requirements

### **3. Family immigration**

Look at part 1 for more information.

Short summary:

- It is the scheme which gives you the most rights in Norway
- You have the rights described in the Introduction law
- It is a requirement that the sponsor must have a certain income
- There is an application fee
- You can get a permanent residence permit after three years
- Longer case processing times than the other two alternatives

## 4.7 Which scheme can I use?

### 4.7.1 You are an EEA national, and your family member who lives, or is going to live, in Norway is also an EEA national

If you are an employee, self-employed, a service provider, a student or have sufficient funds, you can use the registration scheme independently (regardless of your family member).

If the person you are going to live with in Norway is registered through the registrations scheme for EEA nationals, you should use the registration scheme yourself, as a family member.

If the person you are going to live with in Norway has a permanent residence permit (settlement permit) you can choose either to use the registration scheme or to apply for family immigration.

If the person you are going to live with in Norway has a residence permit (is not registered through the scheme for EEA nationals) you can apply for family immigration.

4.7.2 You are not an EEA national, and your family member who lives, or is going to live, in Norway is an EEA national

If the person you are going to live with in Norway is registered through the registration scheme for EEA nationals, you should apply for a residence card.

If the person you are going to live with in Norway has a permanent residence permit (settlement permit) you can choose either to apply for a residence card or to apply for family immigration.

If the person you are going to live with in Norway has a residence permit (is not registered through the scheme for EEA nationals,) you can apply for family immigration (or for example a residence and work permit or a study permit).

4.7.3 You are an EEA national, and your family member who lives or is going to live in Norway is a Nordic national

If you are an employee, self-employed, a service provider, a student or have sufficient funds, you can use the registration scheme independently of your family member.

If your family member who lives in Norway is an employee, self-employed, a service provider, a student or have sufficient funds, you can register through the registration scheme as a family member.

You can apply for family immigration.

4.7.3 You are not an EEA national and your family member who lives or is going to live in Norway is a Nordic national

If your family member who lives in Norway is an employee, self-employed, a service provider, a student or have sufficient funds, you can apply for a residence card.

You can apply for family immigration.

#### 4.7.4 You are a Nordic national

You do not need to register or apply for a residence permit in order to live or work in Norway.

## **4.8 Refoulment**

You can lose your permit to stay if you have given the government incorrect information, violated the Norwegian law of immigration or the Norwegian criminal law. Those who are protected against refoulment are Norwegian citizens or persons born in Norway and later have resided in Norway continuously.<sup>174</sup>

This means that your permit to stay in Norway expires. Refoulment is therefore something else than rejecting applicants to enter or where you just have to leave the country and are allowed to return. Refoulment can be permanent or temporary. You can also risk being enrolled in SIS<sup>175</sup>, which means you do not have the right to enter or stay in the Schengen area.

A decision of refoulment is an infringing administrative decision which involves that any valid permission to stay in the realm ceases when the decision is final. The foreigner will then be obliged to leave the country.

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<sup>174</sup> According to utll. § 69 the requirement of "continuous housing" means that the foreigner always has had permanent housing in Norway after being born.

<sup>175</sup> Schengen Information System

In all cases, the immigration authorities will consider whether the measure is proportionate. A foreigner cannot be expelled if, in view of the seriousness of the conditions and the foreigners' connection to the realm, it is considered to be a disproportionately measure against the alien himself or his or hers immediate family members. In cases involving children, the child's best interests shall be a primary consideration. There are various factors that UDI emphasizes in such an assessment. Examples of this would be how long the foreigner has been in Norway with a valid permit, how old you were when you came to Norway, weighed against the attachment to the home country, etc.

A decision of refoulment made by UDI can be appealed to UNE. In this regard, it is important to check if you fulfill the requirements for free legal aid.<sup>176</sup>

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<sup>176</sup> See section on legal aid.

# Kapittel 5

## Marriage and cohabitation

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## 5.1 Entering into marriage

Marriage in the legal sense is a legally binding relationship between two people of the opposite sex, or two people of the same sex who enter marriage in certain forms when such marriage is authorized by the society and involves certain legal effects.<sup>177</sup>

### Engagement

When two people have decided to get married, it is customary to entitle these as engaged. Such a promise is not binding. One can at any time cancel the engagement. Being engaged does not have many legal effects. According to law the phrase "being close to someone" is often used as a condition. A fiancé is usually considered as someone who is close to you.

## 5.2 Requirements of marriage<sup>178</sup>

There are several conditions that must be met in order for two people to be able to marry. The conditions are divided into *material* and *formal* requirements. The material conditions are requirements to be able to get married. The formal conditions are requirements to the form of marriage ceremony to ensure the validation of the marriage. In the following there will be given a review of the various conditions.

### Those who wish to marry has to be mature

There is a requirement that those who wish to marry must have an understanding of what marriage entails. Both parties must be 18 years when the marriage takes place. If a person is under 18 years and wants to get married, his or her parents

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<sup>177</sup> Ekteskapsloven § 1.

<sup>178</sup> A requirement is a condition for something to happen. In this context meaning requirements to get married.

must give their approval of the marriage.<sup>179</sup> It is important to be aware that marriage must be your own free will. No one can be forced to marry in Norway.<sup>180</sup>

### Infectious diseases

Anyone who has an infectious disease that can be transmitted through sexual intercourse must tell this to the other, before entering into marriage.<sup>181</sup> It should be mentioned here that the doctors do not have a duty of confidentiality regarding this to the other party.

### Marriage between relatives

In Norway relatives are not allowed to marry. The reason for this is first of all that the offspring (children) of parents, who are related, can be damaged. More important is probably the ethical conditions. Norwegian law considers the marriage between relatives to be unethical. Intercourse with relatives will in some cases give reason for punishment.<sup>182</sup>

The prohibition to marry relatives is first of all applicable to persons who are relatives in the direct ascending or descending line<sup>183</sup> and between siblings. Straight up – or descending line involves parents and children, grandchildren and so on. Half-siblings are also understood as siblings. This means that even if two people are married without knowing they were siblings, the marriage cannot be approved, and it will not be given a permission to marry.

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<sup>179</sup> Ekteskapsloven § 1 a.

<sup>180</sup> Ekteskapsloven § 1 b

<sup>181</sup> Ekteskapsloven § 5

<sup>182</sup> Straffeloven §§ 195–199.

<sup>183</sup> This is between children and parents, and adopted children.

### Prohibition against bigamy

Bigamy means having multiple spouses at the same time. This is not legal in Norway. A person cannot be married as long as he or she is married to another.<sup>184</sup> This is a strong principle in Norwegian law. A violation of this principle is punishable.<sup>185</sup> We will return to how a marriage dissolves.

### Legal residency

In order to get married in Norway you must have legal residence in the country. The purpose of this rule is to prevent people of marrying pro forma to be granted a residency permit. Pro forma means that a marriage has no real effect. One only enters a marriage of pure formality, but is not really married in the practical sense. Otherwise, requirements of marriage also applies for foreigners.

## **5.3 Testing the requirements of marriage**

It is important to control that the requirements of marriage are met. Before the marriage is approved, the requirements of marriage shall be verified.<sup>186</sup> This test is performed by the tax office. The parties must give information about themselves. You have to write a statement that you are not related, state any former spouses and if you have an infectious disease. There is also a requirement that you inform whether you have children or are expecting a child with someone else. Some of the information also has to be documented to prove that the information is correct. This includes amongst other things the requirement to present a birth certificate. If you have been married previously you also have to submit a certificate proving the previous marriage is dissolved / ended.

When the conditions for marriage are tested and approved, you should receive a test certificate.<sup>187</sup> The certificate is valid for four months. This means that you have

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<sup>184</sup> Ekteskapsloven § 4.

<sup>185</sup> Straffeloven § 220.

<sup>186</sup> Ekteskapsloven § 6.

<sup>187</sup> Ekteskapsloven § 10

to get married within four months – if not there must be a new test. If the parties get married without having undergone this test, the marriage is not considered valid.<sup>188</sup>

## 5.4 The marriage ceremony

The foundation of marriage is called a marriage ceremony, and the one performing the ceremony is the person in charge of the solemnizing. The ones to be wed, is called bridal parties. In Norway a marriage ceremony is subject to certain formal bounds. This is based on the need for clarity for both parties who wish to enter marriage as well as the outside world. At the ceremony the bridal parties must appear in person and simultaneously. They must declare that they want to marry each other, which occurs when the person in charge of the solemnizing asks them. There shall also be at least two witnesses present. Finally, the person in charge of solemnizing declares them as married.

The bridal parties can also get married outside of the church, without any regard to religious matters. Civil marriage is open to everyone. In 2003 marriage ceremonies within registered religious groups was declared as valid.

## 5.5 Marriage deficiencies

We have in the previous explained different rules that one must follow when wanting to marry in Norway. In the following we will look at what happens if one or more of these rules are not followed.

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99 Ekteskapsloven § 16.

If the forms of marriage ceremony are not followed, or the parties have been solemnized before completing the marriage requirements test, marriage is not considered valid.<sup>189</sup> A marriage is also not considered valid if the pastor of the Norwegian Church has not followed the liturgy determined by the Synod.

Finally, the county governor can go to trial considering the validation of the marriage.<sup>190</sup> The reason for this is primarily the work against forced marriage, but also applies to the work against bigamy and marriages under false identity. The county governor can therefore go in and prevent this from occurring.

## 5.6 Marriage registration

Registration of marriage by marriage ceremony in the Norwegian Church takes place in the church records. If you got married in the courthouse the marriage is registered in the offices protocol. Marriage ceremonies of registered religious communities are registered in the religious community's book of marriage.

## 5.7 Marrying abroad

Even if you have been married outside of Norway, the marriage is usually recognized here. This is where the marriage is formally established by the applicable rules where the marriage was entered into.<sup>191</sup>

If, for example, you have two wives when moving to Norway (bigamy), the marriage will still be valid, but both wives can require that their marriage shall be

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<sup>189</sup> Note 10.

<sup>190</sup> Ekteskapsloven § 16 a.

<sup>191</sup> Ekteskapsloven § 18a.

dissolved.<sup>192</sup> The county governor shall as a main rule take action to further lawsuits in bigamy cases.

Furthermore, marriages entered into when abroad are not valid in Norway if at least one party is a Norwegian citizen or permanent resident in Norway, and:

- a) The marriage was entered into without both parties attending the marriage ceremony,
- b) one of the parties was under 18, or
- c) one of the parties already were married.

## 5.8 Dissolution of marriage

We have now been through the rules that apply to entering marriage. In the following we will explain the rules for dissolving the marriage, meaning the situation where one leaves the other, which is called divorce. The most common problems are found when deciding what to do with the assets. We will come back to later. Here we will present the rules of marriage dissolution, while both spouses are alive. What applies to marriage dissolution as a result of the death of one of the spouses is regulated by the Norwegian law of inheritance.

### Mediation and counseling

When the situation is that the spouses leave each other, or are considering doing so, one often needs counseling. This is especially when there are children involved.

If you have children, which is younger than 16 years, mediation is required when seeking a separation or divorce.<sup>193</sup> The reason for having to mediate is to try to find

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<sup>192</sup> Ekteskapsloven § 24.

<sup>193</sup> We will return to explain the difference between separation and divorce.

a good solution for the child after the parents get divorced. One must come to an agreement on custody, visitation and who the child will reside with.<sup>194</sup>

### Separation and divorce

There are four different ways a marriage can be dissolved.<sup>195</sup> Firstly, marriage can be dissolved when the spouses initially becomes separated. This is done by signing separation papers. A spouse does not have to justify why he / she wants to be separated. When you submit your separation documents to the County governor, you are considered as separated. Next step will be to demand a divorce. You must have been separated for at least one year before you can be divorced. If you within this year resume cohabitation by moving together again or simply continue to live together after you have applied for a separation, the separation will not have any effect and the separation time stops.

Another way to dissolve a marriage is by something called breaking up the cohabitation. This means moving away from each other. Here you do not have to apply for separation. The difference is that cohabitation must have been broken for at least two years before you can get a divorce.<sup>196</sup>

When you are divorced can enter marriage again. This is the main difference between being separated and divorced. When you are separated, you cannot marry another person.

In some cases, you can demand a divorce without having been separated or first going through a break up. This applies if the other spouse has intentionally attempted to kill him or her or the children or intentionally exposed them to

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<sup>194</sup> We will return to these concepts.

<sup>195</sup> Ekteskapsloven § 19.

<sup>196</sup> Ekteskapsloven § 22

serious abuse. The same applies if the spouse has behaved in a manner that is likely to cause serious fear of such behavior.<sup>197</sup>

## 5.9 The property relationships between the spouses.

### The spouses has the right to decide over their own assets

In Norwegian law there is a principle of free disposal of personal belongings. Marriage does not imply any limitation in a spouse's right to decide what he or she owns when the marriage is entered into, or later acquires.<sup>198</sup> This right applies both factually and legally. Actual right to decide over your own assets means that you have the right to physically possess and use the asset, while legal sovereignty means having the right to sell or lend it away.

### Shared housing and assets in the household

The shared house is the place where the spouses have their mutual residence. If this is owned or leased does not matter. A spouse must consent in writing for the other spouse to be able to sell or place a pledge upon their shared house.<sup>199</sup> If one spouse sells the property without the other spouse's consent the sale can be reversed.

### The responsibility of debt between the spouses

Each spouse is only responsible for the debt they personally commit to. A spouse cannot commit the other party to a loan or other debt in any way on their behalf.<sup>200</sup> If one is to make the other party responsible of debts, this must be agreed upon, usually through both signing the loan papers.

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<sup>197</sup> Ekteskapsloven § 23

<sup>198</sup> Ekteskapsloven § 31

<sup>199</sup> Ekteskapsloven § 32

<sup>200</sup> Ekteskapsloven § 40

In some cases, a spouse may still make the other party responsible for debts. A spouse may enter agreements about the daily household, raising children and regular agreements to meet the individual spouse's basic needs.<sup>201</sup> One can thus enter agreements which make both spouses responsible, if the agreement is a part of the family's needs.

## 5.10 Agreements on property arrangements

Later we will look at how the mutual assets will be shared when the spouses get divorced. We will first take a closer look at the different agreements spouses can enter about property arrangements during the marriage.

Spouses may come to an agreement that everything they own or subsequently acquire will not be divided amongst them (rules on the dividing of assets will be discussed later). This is called an agreement of separate properties. You can decide that the agreement of separate property shall apply to one's financial assets, some of the financial assets, or the financial assets of both parties. Such an agreement must be formalized as a marriage contract.<sup>202</sup> A marriage contract is an agreement between the spouses, which follows certain formal requirements. If you have agreed upon separate properties this means that the other party is not entitled to any of these assets if you divorce.

Moreover, you can agree that separate property shall not apply if one of the spouses dies. This applies if you have agreed upon separate property, but do not want this to apply when one of the spouses dies. Such an agreement allows a spouse to ensure that equal sharing of assets when facing separation or divorce does not take place, while the surviving spouse is given the rights of mutual property with the heirs of the deceased.

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<sup>201</sup> Ekteskapsloven § 41

<sup>202</sup> Ekteskapsloven § 54

You can agree that the spouse who lives the longest should have the right to keep the estate undivided<sup>203</sup> together with their separate property, or parts of their separate property. This can be done if you have agreed upon separate property, but do not want a change of separate property to be implemented until the spouse who lives the longest eventually dies.

Finally, you can also enter an agreement that the rules on splitting assets unevenly should not apply when dividing the estate.<sup>204</sup> The rule on splitting assets unevenly state that each spouse can require that assets they had when entering marriage, shall be held outside the division (we will return to this), but you can agree that this rule shall not apply.

## 5.11 Gifts between spouses

It is common that spouses give gifts to each other, and there is of course nothing bad about this. Most gifts can also be given without requirements of formalization. Gifts of greater value must still be formalized in a marriage contract to be valid.<sup>205</sup> A gift is given when you transfer an asset to another to enrich this person.

An ordinary gift does not need to be formalized in a marriage contract to be valid. What an ordinary gift is depends on the economy of the spouses. If you give away a house this will normally not be an ordinary gift, but a gift that must be formalized in a marriage contract. For such large gifts the transfer should be judicially registered as well.

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<sup>203</sup> This is a hereditary legal term that means that the surviving spouse can sit with the values that the spouses had, without heirs being able to claim inheritance. The estate will be divided when the spouse who lives the longest eventually dies.

<sup>204</sup> Dividing the estate is here understood as the financial settlement between the spouses after marriage

<sup>205</sup> Ekteskapsloven § 50

## 5.12 Marriage contracts requirements

Firstly, a marriage contract must be in writing, and both spouses must sign it. At the same time there must be two witnesses who know that a marriage contract is to be concluded, and which both spouses have accepted.<sup>206</sup> These two witnesses shall also sign the marriage contract.

If the marriage contract favors just one of the spouses, this spouse does not have to sign the marriage contract.

When a marriage contract is concluded and the formal requirements are met the contract is considered as valid and hence binding between the spouses.

## 5.13 Dividing of assets when divorcing

When spouses go their separate ways this usually has an impact on their economy. Most people get an economic reduction, because they have to take care of a household on their own. The general rule is that the assets shall be divided between the parties. In family law, it is the rules on financial dividing that causes most of the conflicts when separating or divorcing. When trying to reach a settlement the spouses are free to decide what to agree upon.<sup>207</sup> This means that you do not have to follow the rules mentioned hereafter, but you can agree upon another arrangement. However, freedom of agreement also arises when written on the dividing of the estate.

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<sup>206</sup> Ekteskapsloven § 54

<sup>207</sup> Ekteskapsloven § 65

### Equal dividing and tax deductions

For spouses who has joint assets the general rule is that their common wealth should be shared equally. This means that the fortunes are added together and divided by two.<sup>208</sup> If you for example own a house, you have to either sell the house to share the money, or one of the parties has to buy the other half. Before dividing assets the debt has to be deducted, so that the remaining assets are the subject of equal division. This also applies when the spouses are jointly responsible for the debt. One can then deduct the portion of the debt attributable to him or her considering the financial relationship between the spouses.

If only one spouse has assets that are joint assets and does not retain assets from the division, one can fully deduct for the debt. This applies no matter what type of debt you have.

### Unequal dividing of assets<sup>209</sup>

There are some exceptions to the general rule of equal sharing. The possibility to divide unequally is one of them. This means that one spouse may keep some values from the division. First of all this has to be assets which can be clearly traced back to the assets a spouse had before entering marriage. An example is where a spouse owned a cabin before entering marriage. When dividing assets this spouse can claim that the value of the cabin shall not be shared with his or her spouse. Secondly, the value of assets that is clearly transferrable back to funds that have been received in inheritance or gift from others than the spouse can be kept away from sharing.

Even if one has the right to unequal dividing, this will not happen automatically. One must claim to get an asset divided unequally to be able to keep the asset out of the dividing of assets. Furthermore, it is the one that requires the asset to be divided unequally that must prove that the value derives from a gift or inheritance. The proof requirement is quite strict, because the value clearly has to be traceable back to the assets the spouse had before the marriage took place. Has there been a

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<sup>208</sup> Ekteskapsloven § 58

<sup>209</sup> Ekteskapsloven § 59

chain of transactions, the requirement of clarification may no longer be considered as fulfilled. An example of this is that a spouse owned an apartment before selling this. This money was used in new investments, and some was consumed on daily expenses. Such a series of transactions may cause the claim of unequal dividing to disappear.

In some cases, a spouse's right to divide unequally may disappear because it would lead to an unreasonable result. This applies, for example, if the other spouse ends up with a very bad economy after the divorce.

### Separate property

As stated earlier separate property is also an exception from the general rule of equal sharing. If one, through marriage contract, agreed to keep certain assets or values outside the division, these shall not be shared with the other spouse.

## **5.14 Claiming compensation<sup>210</sup>**

Sometimes a settlement by the rules explained so far will lead to a distribution that does not meet the rule of equal sharing. Provisions on compensation are necessary in such cases to correct the unequal division that can occur when a spouse has reduced the total amount of assets that can be shared.

One may be entitled to compensation if the other spouse has used joint funds to increase the value of their own separate property.<sup>211</sup> Examples of this can be that they have used joint funds to renovate a property which is separate property. Then, the other spouse may be entitled to compensation.

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<sup>210</sup> Ekteskapsloven §§ 63 og 73.

<sup>211</sup> Ekteskapsloven § 63 first section

One may also be entitled to compensation if the other spouse has a weakened the total amount of assets that can be shared.<sup>212</sup> This covers the cases where one of the spouses, for example, has destroyed or given away their own belongings.

Finally, one can be entitled to compensation if you have spent money on assets which is the separate property of others. In order to get compensation the spent money must have led to the assets increase in value. This can typically be if you have paid for the construction of someone else's separate property estate.

## 5.15 The right to keep what is rightfully yours

When you have agreed upon how much money each spouse gets, the question of how the individual properties should be distributed arises. Also here the freedom of entering agreements between spouses applies.<sup>213</sup> In other words you can agree freely on who should have what properties.

If the spouses cannot agree on who should get what there is laws that regulate this.

The general rule is that each spouse is entitled to keep what they own.<sup>214</sup> One has the right to keep what one "fully or substantially is the owner of". This means that one must have a stake of around 75%. This right applies even if the asset value exceeds what the spouse is entitled to when sharing assets. If the asset exceeds the amount the spouse is entitled to this spouse has to pay the other spouse the difference between the value and what one is entitled to.<sup>215</sup>

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<sup>212</sup> The total amount of assets that can be shared is the sum of the parts from each spouse that can be shared with the other.

<sup>213</sup> Look at note 32

<sup>214</sup> Ekteskapsloven § 66

<sup>215</sup> Ekteskapsloven § 70

### Keeping what is rightfully yours can be clearly unreasonable

If keeping an asset you own is clearly unreasonable, you will lose this right. What matters are the other's needs or interests in the asset. It is highly unlikely that you do not get to keep what you have ownership of, as "clearly unreasonable" are strong words. If the other spouse refuses to allow the owner of the asset to obtain it, the only option is to sell it and split the sum.

### Housing and household goods<sup>216</sup>

When it comes to housing one of the parties may be entitled to keep the former mutual home, regardless of who owned it.<sup>217</sup> This does not happen automatically, but one of the parties can be able to keep their former mutual home instead of money he or she would be entitled to after the dividing of assets. The same goes for furniture.

One of the parties can only be entitled to the former mutual home and household goods if there is "special reasons" that favors him or her. This means that the one who wants to keep the property after the divorce must have a particular need for it. The needs of the spouses will then be weighed against each other. The needs of the children will also be considered. The one the children will reside with permanently will often have a greater need to keep their home. When it comes to household goods, it is common to share it so that each spouse receives something.

## **5.17 Cohabiting in a relationship**

People who live together in a stable marriage-like relationship is often termed as cohabitants. They are not married, but can marry if they wish. The biggest difference between marriage and cohabitation is that you do not have any law that provides guidance on how cohabitation shall be concluded and dissolved, or how to divide financial assets.

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<sup>216</sup> Household goods are assets that naturally belongs within a house

<sup>217</sup> Ekteskapsloven § 67

#### 5.17.1 The right to dispose of assets and responsibility of debt when cohabiting

You dispose over your own assets as you wish when cohabiting. A partner has in other words, full legal and de facto right of disposal over what he or she owns. You can sell your property or other assets without the consent of the other partner when cohabiting.

If you own a home together it is the Norwegian law of shared ownership that applies. If you own a home or other objects with a cohabiting partner, you cannot sell the asset, but only your own part of it.

When it comes to debt, a cohabiting partner can only establish debts on his or her own behalf. Therefore, a cohabiting partner cannot be liable for debts the other partner has established. You can still establish debts together, which is usually done when purchasing a property that is owned by both.

#### 5.17.2 The financial settlement when ending a cohabiting relationship

Settlement after ending the cohabitation depends on who owns what. It is not like the settlement after marriage where assets will be shared equally. When ending a cohabiting relationship you can take with you what you owned when you were living together when moving. It is therefore important to know who owns what. In cohabiting relationships, there are two terms called sole ownership and joint ownership.

Sole ownership means you have full ownership over something. There is no one else who owns a share of this asset. Joint ownership means that two or more own something together. Two people can as an example own a house with one half each, or one of them may hold 30% and the other 70%.

To be clear on who owns what, and what you own together, it is common to write contract of cohabitation. Such an agreement will apply if the cohabiting relationship ends. You can agree on who should be the owner of the assets in the contract. There are no formal requirements for these agreements, but they should at least be in writing.

It can be difficult to include all of the assets of these kinds of agreements. The starting point is thus that a person purchasing an item is the sole owner and therefore has the right to keep this asset if the relationship comes to an end.

# Chapter 6

## Debt

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## 6.1 Introduction

Unfortunately there are few laws that will give you any right to help if you have problems servicing your debt obligations. One reason for this is the principle that all debt shall be paid. If there's no more money left to pay the bills it's important to address the problems as soon as possible. No good will come of ignoring bills and other claims against one self. On the contrary, the debt will grow much bigger counting interests and other expenses. One way to deal with these kinds of challenges is to enter into down payment plans with the creditors.

## 6.2 Get a full overview of your debt

First of all you need to get a general idea of who your creditors are. A creditor is a person you owe money. A creditor is allowed to assign his claims against you to others. The most common way to do this is to through so called "collection agencies". This means that the collection agency is your new creditor, and you will have to relate to them.

To get a full impression of your debt, it's important to collect all documents relating to incomes and expenses. It's also possible to get a complete list of claims against you by contacting different collection- or credit information agencies. Another possibility is to contact your creditors directly to get information regarding your debt.

The following is an example of how a letter to your creditors may look like:

The full name of your creditor

His address

Your full name

Your address

OVERVIEW OF MY DEBT

Date

Your social security number

I would like to get my finances organized. For this reason, I wish to get a full summary of any debt I might have at yours.

I need information about how much I owe you in total, the initial repayment plan, the principal amount, interests and costs. I ask that a legal basis for the claim be provided as well.

I would like to propose a new repayment plan if you allow it. While this is in the making, I ask that any debt be frozen so that additional interests and costs do not accrue.

This letter does not imply recognition of any debt.

I await your reply as soon as possible.

To your information, equal letters are sent to all of my probable creditors.

With best regards

Your full name

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## 6.3 Get a full overview of your own finances

In the work of making a new repayment plan, you'll need to get a complete understanding of your own finances. Your ability to pay will determine how much you can spare to cover debts each month.

The best way to be fully aware of your own finances is to make a summary of all income and expenses on a monthly basis.

Regarding the costs, it's possible to use the so-called SIFO numbers. The entire chart is to be found at SIFO's website: <http://sifo.no/files/standardbudsjett2011-eng-print.pdf>

The following is an example of how you can put together a budget on your own:

*This example is based on the income and expenses each month of a 24-year-old man*

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Costs:

Rental costs:	5000
Electricity:	600
Food and beverages:	2550
Clothing:	680
Personal care:	500
Travel costs:	620
Phone and media:	600
Household:	250
Total costs:	10800

Income:

Salaries (net):	12000
Various benefits:	5000
Total income:	17000

*To repay debt: 6200*

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In the example above, we find that this person can allocate approximately kr 6200,- each month to repay his debt. When you put together your own budget, you might have to use different posts than this example has shown.

When you're in the making of a down payment plan, you might have to cut some of the costs. Either remove them completely or cut them as much as possible. If you have a car you could consider selling it and buy a bus ticket instead. The main thing to have in mind is that your budget should show your creditors that at least you have the willingness to pay.

#### Documentation related to your income and expenses

The creditors need to know that the numbers in your budget are genuine. Therefore, it's important that you are able to document both earnings and expenses. Paychecks or other payment tags will document your income. It could also be a good idea to add a copy of your last tax return. To document your costs, you can use the SIFO-numbers as mentioned above. Certain costs must nevertheless be documented otherwise, such as electricity and rental costs. These costs will vary a great deal depending on the individual. As an example, a copy of your rental agreement can document your rental costs.

## 6.4 Make an overview of the dividend

An overview of the dividend will show each creditor how much of your total debt are theirs in percentage. Let's say, for an example, you owe three different people a total of kr. 100.000,-. Creditor A claims kr. 11.000, creditor B claims kr. 70.000 and creditor C claims kr. 19.000.

The creditors dividend (percentage of your total debt) is as follows:

Creditor A's share: 11%

Creditor B's share: 70%

Creditor C's share: 19%

Creditors will be paid depending on the percentage of your total debt they are entitled to. It would not be fair to pay one creditor the whole amount, while others would have nothing. This is why you have to calculate the dividend. In other words, the creditors need to be treated equally. These calculations are usually essential to get all the creditors to agree on a down payment plan.

You can use this form to calculate each creditor's dividend:

Dividend in percentage									
Last settlement									
Total									
Expenses									
Interests									
Principal amount									
Case no.									
Address									
Creditor									

## 6.5 Different ways to solve your problems with debt

### Refinancing

This means you gather several liability posts under the same loan. Normally you will get better terms for down payment if you gather lots of small (and usually expensive) loans under a single loan. Refinancing is probably the smartest thing for those who have a small debt to pay. To make refinancing happen, you need to contact your bank.

### Postponed payment

There is possible to ask your creditors for a postponed payment. This usually requires that your problems are short-termed. An example is prisoners. They can ask their creditors to freeze their debt while in jail.

### Settlements

*A short version of the applicable law and the considerations it relies on*

In Norway we have a law regarding debt settlements.<sup>218</sup> The purpose of the Act is to provide people with serious debt problems an opportunity to gain control over their financial situation. The main content of the law is that people with severe and enduring payment problems might get their debt erased by paying some of the debt over a five-year period. A socioeconomic idea behind the making of the law is to give the person who is no longer able to service their debts a fresh start. If the debtor gets a chance to erase his debts it can help in the motivation to gain employment. Without the settlement act, debtors increased effort to work would solely benefit the creditors. This would probably not inspire any debtors to try settling their debt.

To gain the debt settlement there is numerous conditions that need to be present. Among others, the law states that a debt settlement can't be established if it would be offensive to the community or other debtors.<sup>219</sup>

### Who can get the debt settlement?

The debt settlement can only be given to debtors who are permanently incapable of fulfilling their obligations.<sup>220</sup> He must, in other words, be delinquent. This requirement is to be interpreted very strict. It's not intended that it should be easy to get into a debt settlement. What matters is whether the situation has become so

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<sup>218</sup> The Act on voluntarily and involuntarily settlements for individuals (the settlement act) of 1992

<sup>219</sup> The settlement act §§ 1-3 second subsection and 5-4 first subsection letter a

<sup>220</sup> § 1-3

difficult for the debtor that he can't regain control of his finances without a debt settlement.

The law specifies that people with serious debt problems should be given an opportunity to gain control of their finances.<sup>221</sup> The debtor's income, expenses and assets are the most important aspects when determining whether he is permanently unable to fulfill his payment obligations. The law requires that the debtor is permanently unable to pay. It's not sufficient that the economy suffers from time to time. On the contrary, the duration requirement emphasizes that the situation must be without future improvements at all.

This assessment needs to be based on facts and not guesswork. For example, it's not relevant to focus on inheritance or gifts that might occur sometime in the future.

If debtor is out of work when he applies for debt settlement, it shall be taken into account that he might get paid employment later on.

#### The debt settlement must not be offensive to society or other debtors

According to the settlement act, the debt settlement must not be offensive to society or other debtors.<sup>222</sup> This refers to disloyal transactions and other modifications. For example, you can't increase the debt burden just before applying for a debt settlement in order to get the settlement. Similarly, one can't refuse to pay the bills if you actually have the opportunity to do so. By reducing your income on purpose, you'll also be ineligible to get a debt settlement.

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<sup>221</sup> § 1-1

<sup>222</sup> § 1-4

### Formal requirements before you can apply for debt settlement

Before one can apply for debt settlement, one must have tried to reach an agreement with creditors on a repayment plan as described in the previous sections. One must argue that it's better for creditors to get some money, as opposed to not getting anything at all.

### Voluntarily and involuntarily debt settlement

The settlement act distinguish between voluntarily and involuntarily debt settlement. This aspect refers to the creditors. For the debtor the debt settlement is always voluntarily.

If one can't agree on a voluntary debt settlement with all the creditors, it's possible to apply for the involuntarily alternative. Such a request is sent to the enforcement office.<sup>223</sup> The request will be transferred to the district court, who will decide whether or not there will be a debt settlement and which conditions will apply.

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<sup>223</sup> § 5-1

# Chapter 7

## Free legal aid

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Legal assistance may involve high costs for the individual. If your finances preclude or limit your ability to seek an attorney, free legal aid may be an option for you. In some cases there is nevertheless possible to be granted free legal aid regardless of your finances. Free legal aid may be granted even after the matter in question is fully processed.

Free legal aid is a social aid scheme. The idea is to ensure the necessary legal assistance to people who do not have financial requirements to carry out a legal aid needs of great personal and welfare impact. Free legal aid is provided by lawyers and is paid fully or partially by the state. There are three different kinds of free legal aid. This includes free legal advice, free legal representation or exemption from court fees. Legal aid is not granted automatically, but must be applied to the county administrator in your community.

Free legal advice is free legal aid outside legal proceedings. It includes consultation on legal issues, information about the law and more extensive processing. Examples of this are the preparation of applications or complaints to government agencies, correspondence with the contracting party or any share of the costs of arbitration. The county administrator may also consent to cover the applicant's own essential and necessary expenses in connection with legal advice, such as travel and accommodation expenses, expenses for interpreters, etc.

Free legal representation is free legal assistance in cases that proceed to court, with the exception of the conciliation board and certain administrative agency. Expenses that might be covered are commission to the lawyer, processing fee and any expenses associated with the case side. There is also possible to get coverage for the applicant's own essential and necessary expenses to the case. This also includes costs of experts who are not appointed by the court and in some cases certain costs to the counterparty.

Exemption from court fees means you don't have to pay to make your case in court. This dispensation may be extended if the case concerns circumstances that authorities should be made aware of or if one wishes to suggest new or amended legislation or administrative practice.

Be aware that one usually has to pay a deductible. By free legal advice this represent the current hourly rate for free legal aid. By free legal representation the deductible is what's minimum of 25% of expenses or 5 times the hourly rate. The current hourly rate is 925,- kr. The deductibles at free legal advice and free legal representation is thus respectively 925,- k.r and up to 4625,- kr.

To be eligible for legal aid you must fulfill certain criteria, which follow from the law on free legal aid. The legislation is complicated and it can be difficult to predict the outcome of an application for legal aid. Firstly you must be either an individual or in special cases an ideal association. This means that usually, you can only apply for free legal help if you are an individual. It's only in exceptional cases that you can apply on behalf of an association or foundation.

The legal aid must also apply to assignments that it's natural for a lawyer in this country to perform. This means that the applicant must have a particular problem related to Norway and there must be a need to engage a lawyer in this country. Nevertheless, it's not a requirement that the applicant is resident or staying in Norway at the time of application. Legal expenses related to foreign court are usually not covered, but exceptions can be made in special cases.

Coverage under the law on free legal aid is subsidiary to other schemes covering or replacing expenses. This means that if you can get your expenses covered elsewhere, you will not have the right to free legal aid. The free legal aid may also be rejected if it's considered unreasonable that the government cover the costs.

Matters requiring trial are matters of employment, issues relating to children, housing matters if you are a tenant, matrimonial, tort, cohabitation, social issues, issues that are under consideration by the European Court of Human Rights, and occasionally also other matters which by the county governor concrete assessment considers legal aid should be granted.

As a rule, free legal aid is not given in matter that requires a trial if the single applicant has taxable gross monthly income that exceeds kr. 246,000 a year or taxable income over kr. 100,000. Nevertheless, it's generally given dispensation for income exceeded in terms of homeownership of normal value or various assets. If the applicant is married or living together with others with shared finances, the gross income limit for the household is a total of kr. 360,000 annually. Total assets cannot exceed kr. 100,000.

County governor may, in some cases, grant exemptions from the financial limits, but the custom is very restrictive. There are also made exceptions in the economic conditions for conscripts in military service. It's important to remember that if the applicant's financial situation changes before legal aid is terminated the permit may be revoked.

Free legal aid regardless of income and wealth may also be awarded in certain cases. This applies mainly to cases of enforcement resolutions, criminal and immigration cases. Still some additional cases might be granted legal aid such as where students are excluded or expelled from the university, some issues related to military service and cases to the Supreme Court by principal interest.

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