


## Proof of Stable Union for the purposes of social security benefit of pension for rural death

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### ABSTRACT

The Federal Constitution grants State protection to stable union, and civil marriage is no longer considered valid for the definition of family, because being the base family of society, stable union, is linked to this new family form. This article aims to demonstrate proof of stable union for the purposes of social security benefit of pension for rural death, showing the necessary requirements to obtain this type of benefit. Therefore, it was necessary to have a research methodology to ensure an updated perspective on the subject, a bibliographic and exploratory excerpt addressing the historicity of stable union in the differentiation of civil marriage, seeking authors' concepts on the subject, how it arose and what requirements were used to prove this social status, and how the right to the benefit of pension for rural death was clear. It is concluded that just as civil marriage is supported by law to guarantee a social security benefit of pension for rural death for the surviving spouse and child, people who live in a stable union are also in the same quality because it is clear that the criteria exist, as being a public, continuous and lasting union and that has the objective of family constitution.

**Keywords:** Family, Stable Union, Requirements, Social security benefit, Rural death pension benefit.

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## INTRODUCTION<sup>3</sup>

The stable union, according to the Civil Code, from articles 1,723 to 1,727, can be considered as a relationship in which there is a coexistence between a man and a woman, which is lasting and established with the purpose of establishing a family.

According to Law 8.213/1991, which regulates the main points on social security benefits. When a person is married, and their spouse dies, the right to a death pension from the National Institute of Social Security (INSS) is granted by the General Social Security Regime - RGPS. In the case of a stable union, however, will the death pension be guaranteed in the same way that it is guaranteed to spouses or children? To be entitled to the death pension, two requirements need to be met, they are: the deceased partner must be insured by the INSS at the time of death and must be characterized as a stable union at the time of death. In this case, same-sex couples can also be considered stable unions, if they are within the composition of a family entity, having the same rights as heterosexual couples. As evidence, in addition to the stable union signed in a notary's office through the public deed of stable union, there are other means for it to be recognized.

In view of this, this article has as its theme the Stable Union, which will seek to show how to prove it for the purposes of receiving a death pension, especially the special insured (rural worker/farmer). It proposes to answer the following problem: How does the recognition of the stable union contribute to the granting of a pension for rural death and the effectiveness of social justice?

For this reason, this article will show how it is possible to obtain the benefit of a rural death pension, complying with the necessary requirements, to which the dependents of the insured arising from death or presumed death are subjected. Seeking to answer the problem, following the general objective which is to analyze how the stable union has significantly influenced the scope of social security law, so that such requirements are fundamental or even indispensable to obtain the benefit of pension for death, if it did not constitute a civil marriage. In addition, the present research is linked to the specific objectives: to contextualize stable union in the legal provisions, to differentiate stable union from civil marriage, to highlight how stable union influences social security law, especially in the benefit of pension for rural death. delimit the requirements for granting the rural death pension benefit.

For this reason, this article will show how in fact a person who in his or her moment of mourning the loss of a loved one, may request the benefit of a death pension if he or she is within the necessary requirements, and being a way to assert his or her right, as a widower or companion as a partner.

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## STABLE UNION IN BRAZIL AS A NEW FAMILY FORM

The Federal Constitution of 1988, in a special chapter, chapter VII of Title VIII – On Social Order, in which it addresses the family, children, adolescents and the elderly, and thus extracting from article 226 of the Magna Carta, says that the family is the result of the following institutes, civil marriage, stable union and the single-parent entity, but in addition to these there is an expansion of the concept of family, thus emerging new models, such as homoaffective family, anaparental family and eudaimonist family. Thus, we can say about family law that:

Family Law is constituted, in essence, by rules of public order, related to personal or existential law. But there are also rules of a private nature, of a patrimonial nature. (...) Family Law has been undergoing profound structural transformations, in the face of new principles that are applicable to this legal branch, some of a constitutional nature. (SIMÃO and TARTUCE, 2010, p. 55)

The family is the basis of society, as it contributes to the development of the personality of its members, as well as to the growth and formation of society itself, thus justifying the protection of the State. In this way, we can say that the matrimonial family results from marriage and the informal family results from the stable union. Thus, Pedrotti (1990) says that "the concept of family, with the 1998 Federal Constitution, can no longer be considered only the original one of marriage." In this sense, the stable union is linked to the new form of family.

## CONCEPT AND ITS HISTORICAL EVOLUTION

A Stable Union is the relationship between two people that is characterized as a public, continuous and lasting coexistence and that has the objective of establishing a family. Thus, also called free union, it has always been recognized as a legal fact, thus assuming a role of great relevance in Brazilian society, characterized as a family entity. For Venosa (2011), "A legal fact is any event that generates legal consequences. Stable union is a fact of man that, generating legal effects, becomes a legal fact."

In Brazil, the first recognition in which the partner could be a beneficiary of her partner to receive compensation on account of a case of work accident was through Decree-Law No. 7,036/1944. Gonçalves (2017) says that "for a long historical period, this family entity was recognized as concubinage, or "free union" because it defined the prolonged union between man and woman, without marriage, life in common, under the same roof, with the appearance of marriage." Soon after, with Law No. 6,015/73, it began to admit the possibility of the partner using the surname of her partner, article 57, § 2. And that the companions would also have the guarantee of claiming alimony claims, by the rite of Law No. 5,478/1968 (alimony law).

With the Magna Carta of 1988, family law was changed in its cultural principle, as it underwent significant changes in the contemporary family, abandoning models that excluded family



relationships not linked to marriage, thus causing absolute inclusion. And so it was recognized in its article 226, § 3, the stable union, in the following terms: "for the purpose of protection of the state, the stable union between a man and a woman is recognized as a family entity, and the law must facilitate its conversion into marriage". Thus, the Federal Constitution grants State protection to stable union.

In the past, the minimum length of cohabitation of 5 (five) years, the existence of children and cohabitation were necessary factors for the recognition of stable union, that is, they were indispensable factors for the characterization of this institute. These rules were applied through Law No. 8,971/1994, thus giving effectiveness to the constitutional provision.

But, in 1996, with Law No. 9,278 in its article 1: "The lasting, public and continuous coexistence of a man and a woman, established with the objective of establishing a family, is recognized as a family entity." With the enactment of this law, such requirements as the time lapse or the existing common offspring were waived. As well as with this law, movable and immovable property acquired during the stable union and for consideration, by one or both, belongs to both. And that the matter about stable union and the jurisdiction of the Family Courts:

Determining Law No. 9,278/96 that the matter of stable union is the competence of the Family Courts, the diploma resolved a pending case present in several States of the Federation, in which the cases were sometimes assigned to civil courts, sometimes to specialized courts, with unnecessary conflicts and jurisdiction." (VENOSA, 2011, PAGE 52)

With the enactment of the Civil Code of 2002, Laws No. 8,971/1994 and 9,278/96 were repealed, as the title referring to stable union was inserted in five articles, from 1,723 to 1727, in which it brings the basic principles of the aforementioned laws. The legislation in force also does not establish a minimum period of cohabitation for a relationship to be considered a stable union. Gonçalves states that, "It is not, therefore, the time with the determination of the number of years that should characterize a relationship as a stable union, but other elements expressly mentioned: public, continuous and lasting cohabitation and established with the objective of family constitution". In complementarity, we can reinforce that:

The requirements (...) are that the union be public (in the sense of notoriety, and cannot be hidden, clandestine), continuous (without interruptions, without the famous "taking a break" that is so common in dating) and lasting, in addition to the objective of the partners or cohabitants to establish a true family (*animus familiae*). (SIMÃO and TARTUCE, 2010, p.277).

In view of such a statement, it must also be said that there is no need for the couple to reside in the same dwelling for the bond to be configured, precedent 382 of the STF. Stable union is recognized as a family entity, just like marriage. With this, it guarantees the same rights and duties provided for in marriage. The property regime of the stable union has partial community as a



standard. But, if they are interested, the couple can define another regime for the union, such as universal communion or universal separation of property, it is possible to formalize a private contract or public deed in a notary office between the parties. The process to obtain the declaration of stable union must be done by the couple at the Notary Office. The private contract, on the other hand, is made by the couple in the presence of a lawyer, and must establish all the rules regarding the division of assets or the dissolution of the stable union.

The stable union is a de facto situation, that is, proving the fact, confirms the stable union. Thus, if it is proven that the relationship meets the requirements of the stable union, it will be recognized as such!

### STABLE UNION X CIVIL MARRIAGE: THE FACTUAL REALITY OF THE BRAZILIAN LEGAL SCENARIO

The main difference between marriage and stable union is in their formation. In marriage, the bond of two people is recognized and regulated by the State, for Venosa (2011) "Marriage is the center of family law. From it radiate its fundamental norms", while in the stable union it is necessary for the couple to start living together, as Venosa (2011) also says that they are social facts and legal facts, the stable union, is a fact of man that, generating legal effects, becomes a legal fact.

Marriage is a legal bond established between two people, to form a family. This bond is carried out through a competent authority and based on conditions described by civil law, in which it is governed by Family Law, (Book IV, articles 1,511 to 1,783) and recognized as a family entity, the marital status of the person who adopts the marriage, changes his previous state, that is, he is no longer single to married. A stable union, on the other hand, is the relationship maintained between two people who live under the same roof. And which must have a lasting, public character and with the objective of forming a family, is governed by Law 9.278/1996, "Art. 1 The lasting, public and continuous coexistence of a man and a woman, established with the objective of establishing a family, is recognized as a family entity" and according to the 1988 constitution, article 226, it is recognized as a family entity, However, the marital status of those who live in this institution is not changed.

Both marriage and common-law marriage are considered family entities. These are relationships governed by family law, guaranteed by the 1988 Constitution. Regarding the legal regime that is in force in marriage and stable union, the following definition follows, in which in marriage, the couple may opt for a specific regime for the division of assets, which must be defined in the prenuptial agreement. You can opt for mandatory separation of property, partial community of property, universal community of property, final participation in the affairs and separation of property. And if there is no definition as to the regime chosen in marriage, what will be in force is the



partial community of property. And in the case of stable union, there are no options, so it is the partial community of property that is in force. Thus, we can state that:

The property regime between spouses comprises one of the legal consequences of marriage. In these relationships, the forms of contribution of the husband and wife to the home, the ownership and administration of common and private assets and to what extent these assets are responsible for obligations to third parties must be established. (VENOSA, 2011, p., 323)

For Gonçalves (2017) "Property regime, especially regulates the dominion and administration of both or each over the previous assets and those acquired during the marital union". Thus, the property regime to be adopted by the marriage bond is the one that meets the best needs of the spouses and the bond of the stable union can only be that of partial community of property, let's see what article 1,725 of the civil code says, "in the stable union, except for a written contract between the partners, it applies to property relations, where applicable, the regime of partial community of property", that is, what is acquired during the union is what will correspond to both, and if there is no formalization of the union, the partner is also not considered an heir.

There are legal impediments for those who want to start a family, which for marriage the legal provision is in article 1521 of the Civil Code, which restricts the union between people with a degree of kinship by blood ties or by affinity. And all legal impediments to marriage are also applicable to stable union. Thus, the rights and duties that govern the family, stable union and marriage are equal. Couples in a stable union can, at any time, convert this union to marriage, upon request made to the magistrate and then the change is made in the Civil Settlement.

### WHAT IS A DEATH PENSION?

The death pension is a social security benefit granted to people who are dependents of someone who has died or in the existence of presumed death, that is, of people insured in some modalities, examples such as the insured employee, individual or optional contributor, among others, which can be either in the Own Social Security Regime - RPPS, which is intended for effective public servants, and in the General Social Security Regime - RGPS, which is intended for other workers, states CUESTa (2024) "The **death pension** is the benefit paid to the **dependents** of the insured when he dies".

In view of this, there are the appropriate means of obtaining this benefit, in both regimes, and that before the social security reform the requirements were simple to obtain the death pension, the surviving spouse or partner, regardless of the age they were at the time of death, the benefit was granted for life and the salary was 100% (one hundred percent) of what was received.



## EVOLUTION AND ITS LEGISLATIVE CHANGE IN RELATION TO STABLE UNION

According to Law 8.213/1991, which regulates the main points about social security benefits, and which from article 74 onwards, begins to address some points of the death pension benefit, and the main one was to always be for life and the salary of the benefit would be the full amount, thus, there are several cases in Brazil of spouses who started receiving the death pension at a very young age and the benefit remains at a entire life. But these points have undergone changes due to changes arising from Law No. 13,135/2015.

Well, just like those who are married, and those who live in a stable union, are also part of the first class of social security dependents and, in this sense, consequently, are entitled to both urban and rural death pensions. However, in order to be entitled to this benefit in the stable union class, two requirements need to be met, they are: the deceased partner must be insured by the INSS at the time of death having at least 18 (eighteen) monthly contributions and the stable union must be characterized at the time of death for at least 2 (two) years.

In view of this, with the new law change in 2015, what was lifelong became the rule that according to the age of the surviving spouse, the duration of the death pension would be, for example, if the spouse or partner is up to 21 (twenty-one) years old, the death pension will last for three years, with 27 (twenty-seven) to 29 (twenty-nine) years, It will last 10 (ten) years, and if you are 44 (forty-four) years old or older, then it will be for life.

In this sense, even with the changes in Law No. 13,135/2015 for the quality of insured and the duration of the death pension benefit, in 2019 the social security reform, Constitutional Amendment 103/2019, took place, and with this reform, as of 11/12/2019, this type of benefit started to follow a different rule, in the form of receiving salaries, because widows before the age of 45 (forty-five) would receive only 50% (fifty percent) plus 10% per dependent up to the limit of 100% (one hundred percent), and that with the death or loss of the quality of beneficiary the quota would not be invested for the others, according to article 23, paragraph 1, EC 103/2019, before they were invested for the co-beneficiaries, According to Law No. 8,112/1990, art.223. However, for the special insured this rule does not count, as the value of the benefit will always be the minimum of one minimum wage in force, so it does not matter the date of death or the administrative request.

## RURAL DEATH PENSION AND ITS MEANS OF PROVING THE STATUS OF DEPENDENT

The Stable Union is a relationship in which a couple has, in this sense the Federal Constitution equates the Stable Union to Marriage, including for social security purposes, thus being part of the **first class of** social security dependents and, consequently, is entitled to the benefit of pension for death. There are three requirements for granting the Death Pension, as stated by Oliveira



(2023), which are death or presumed death of the insured; the status of insured of the deceased, at the time of death; and the existence of dependents who can be qualified as beneficiaries with the INSS.

For couples who registered the Stable Union in a notary's office, there is no bureaucracy for proof before the INSS. For couples who have not made their bond official, it is also possible to guarantee the benefits of the National Institute of Social Security - INSS, but the path will be a little longer.

Normally, the proof of the Stable Union for the INSS happens through only two documents, the Marriage Certificate or the Stable Union, both registered in a notary's office. In the absence of these documents, it is possible to prove the relationship in other ways. According to article 16, § 6, and article 22, §3, it is necessary to present at least two documents to prove the bond of the Stable Union, says Brocanelo (2022).

To be entitled to the death pension, the partner of the insured who dies must present to the INSS at least two proofs of stable union. One of these proofs must be from a maximum of two years before death. Proof of these requirements can be made in several ways, which are: joint bank accounts, health plans in which one partner is listed as a dependent of the other, income tax return and even photos and witnesses that prove the public and notorious bond of the partners.

Some examples of documents that may be accepted are: birth certificate of a child in common; religious marriage certificate; proof of the same domicile; joint bank account; Income Tax return in which one is listed as a dependent of the other; insurance policy in which one is the settlor and the other is the beneficiary; treatment record in a medical institution in which the partner is listed as responsible for the insured, or vice versa; among other documents that may serve for this proof. (BELTRÃO, 2023)

It is possible that the dependent will not be able to gather 3 (three) of these required documents and will be denied the benefit, as the INSS must strictly follow what is written in the law. In this case, the person can file a lawsuit in court so that other factors are also analyzed to prove this union and thus be entitled to the death pension. The stable union, whether formalized or not, allows the receipt of a death pension, not only from the INSS, but from other bodies in which the instituting person (deceased) worked. The competent documents must be presented, depending on the social security regime in which the possible pension settlor would fit.

In view of this situation, the rural death pension benefit follows some requirements for proving the quality of special insured (farmer/farmer) being indispensable, and evidence that corroborates to prove both the special quality and the dependence through the stable union, some evidential documents in which it is possible to attest such quality before the National Institute of Social Security – INSS, Follows:

- Original identification document, CPF and proof of address;
- Death certificate or document proving the death of the insured;





- Documents that prove the social security relationships and beneficiary ties of the deceased (work card, union contribution guides, union statement, store form, CAF – National Registry of Family Agriculture, PRONAF – National Program for the Strengthening of Family Agriculture);
- Documents that prove their status as a dependent (marriage certificate, children's birth certificate, judicial guardianship certificate, income tax return of the insured, in which the interested party is listed as their dependent, CADUNICO, joint bank account, insurance policy, additional credit card, among others);

In this way, with proof of the quality of insured proven and the stable union, the granting of the rural death pension benefit may be granted, if the INSS - National Institute of Social Security deems it sufficient evidence.

### STABLE UNION AND ITS INFLUENCE ON THE SOCIAL SECURITY BENEFIT OF PENSION FOR RURAL DEATH

In **marriage**, as it is recognized and legalized by the State, the marriage certificate itself characterizes the veracity of the union. But there are three principles that govern this union, which are freedom of union, monogamy, and communion of life. Since in **the stable union**, as there is no recognition by the State, some elements have become essential characteristics in the recognition of this relationship, which are public coexistence, continuous coexistence and stability.

When it comes to the right that each one has inherent to the death pension, in marriage, the ease is better to request such a benefit, since it is guaranteed by the marriage certificate, that is, legalized and formalized before competent authorities, which is added to the death certificate and other documents. In the case of stable union, even if the partner is entitled after the death of his or her partner, the bureaucracy is greater, as it is necessary to prove the stable union to the INSS through an administrative procedure, and even so with all this evidence you may have the benefit denied, and which can only be resolved in the courts.

The law that regulates the death pension benefit is Law No. 8,213/91, in article 74 et seq., which is the INSS benefits law. The Death Pension is a social security benefit granted to the dependents of the insured of the National Institute of Social Security (INSS) who dies, whether he is retired or not. It is a continuous benefit, replacing the remuneration that the deceased insured received during his lifetime for the benefit of his dependents. Thus, Cuesta states:

The death pension is the benefit paid to the dependents of the insured when he dies. The dependents of the insured are the spouse or partner, the child up to 21 years of age or disabled of any age, equivalent to children, parents and siblings up to 21 years of age or disabled of any age. (CUESTA, 2024)



The death pension does not require a **grace period** by the insured, but depending on the duration of the relationship and the age of the surviving spouse or partner, it may not be lifelong, because with the advent of Law 13,135/15, article 77, § 2, V, paragraph c, there was a change in relation to the duration of the death pension in order for this benefit not to be always lifelong for the spouse. Thus, Ramos (2022) states that:

In addition to proof of 18 (eighteen) monthly contributions and at least **two years of union**, the duration of the pension will depend on the age of the dependent. Also, if the two years are not completed, he will be entitled to receive the benefit for four months. For the children, the death pension will be due until the age of 21 (twenty-one), and for the disabled adult child, as long as this condition lasts.

There is the possibility that the benefit of the death pension can be paid to those who lived in a stable union with the deceased partner, as long as they prove the requirements that qualify it, which are continuous, publicly and lasting coexistence, as stated by Simão and Tartuce (2010) in which the "requirements (...) are that the union is public (in the sense of notoriety, it cannot be hidden, clandestine), continuous (without interruptions, without the famous "taking a break" that is so common in dating) and lasting" with the intention of forming a family.

### **RATIFICATION WITH THE GRANTING OF THE RURAL DEATH PENSION BENEFIT**

Ribeiro (2012) says that marriage is the family that tradition, interpreted by positive law, bequeathed to us, thus ensuring legal certainty, and was seen as an absolute truth, where the bride and groom established full communion of life, with rights and duties, with protection and reciprocal fidelity, and that they mutually cared for their children. However, what has been demonstrated throughout this article is that currently, there are other forms of families, that is, the concept of this is no longer the same, and can arise in different ways, summarizing affection.

In this way, the Federal Constitution of 1988, recognized, within the positive law, the stable union as a family form, attributing to it the partial property regime and all the guarantees, in case of divorce or death of the partners. After that, in 2002, in the Civil Code it was also recognized as a family entity, but it would have to comply with requirements that led to believe that it was a stable union between man and woman, which are a public, continuous and lasting coexistence, also submitting to loyalty and fidelity between them, as Ribeiro (2012) also states:

Stable union comprises the family arrangement that has the appearance of marriage, but its plot did not begin with the formalities of marriage. It is a relationship configured in public, continuous and lasting coexistence and established with the objective of family constitution (CC/2002, art.1733). Companions submit to the duties of loyalty, mutual respect and assistance.



In this sense, fulfilling requirements that prove the stable union, for the granting of the rural death pension benefit is no different, the special insured needs to gather evidence that will help him to achieve the benefit of right, and some evidence of paramount importance that in addition to proving his quality of insured, will also prove the companionship, proving the last two years, they are registration with CAF – National Registry of Family Farming, PRONAF – National Program for the Strengthening of Family Farming, in addition to joint bank accounts, among others.

In addition to the above, considering that it is not only an economic issue, but one of social justice, as many were financially dependent on the loved one who died, it is the guarantee of a monthly income through the rural death pension benefit, which can supply and provide a dignified life for the surviving family members.

## **METHODOLOGY**

For the development of this article, whose theme addresses **THE PROOF OF STABLE UNION FOR THE PURPOSES OF SOCIAL SECURITY BENEFIT OF PENSION FOR RURAL DEATH**, the taxonomy of Vergara (2011) was used, which qualifies the classification of the research in two aspects:

As for the purposes - the article was developed through an exploratory research. According to Vergara (2011), exploratory research is carried out in an area in which there is little accumulated and systematized knowledge.

As for the means – it is a bibliographic research. In relation to this type of research, Marconi and Lakatos (2003) state that its purpose is to put the researcher in direct contact with everything that has been written, said or filmed on a given subject, including conferences followed by debates that have been transcribed in some way, whether published or recorded. In this way, bibliographic research is not a mere repetition of what has already been said or written about a certain subject, but provides the examination of a theme under a new focus or approach, reaching innovative conclusions. In this way, search platforms such as Google Scholar and SCIELO were used, delimiting the search for articles in the period from 2020 to 2024, and that the keywords used were Pension for death, pension for rural death, stable union, pensioner, social security benefits, this delimitation brought crucial information for the preparation of this article.

## **CONCLUSION**

As a conclusion, this article, which deals with the proof of stable union to acquire a social security benefit of pension for rural death, addresses a legal and social analysis in relation to this family modality in which many Brazilians live, the Stable Union, as a civil status, and regulated in legal provisions, bring numerous contributions and guarantees to the partner, such as some



addressed in this article, providing rights to the social security benefit of pension for rural death, through documents and requirements explained, that is, to the dependents of an insured who dies. Because this benefit is a financial guarantee for that family that has lost a loved one and, in addition to suffering the pain of the loss, it can suffer an impact on the budget, because most families end up being the deceased.

CUESTA (2024) says that the death pension is the benefit paid to the dependents of the insured when he dies, and that whose dependents of the insured are the spouse or partner, children up to 21 (twenty-one) years of age, or when the child has a disability, which can be any age.

It was noted that there are specific requirements for a person living in a stable union to be considered dependent on the insured and to obtain the benefit through documents that corroborate the certainty that they lived in a public, continuous and lasting union and that they had the objective of establishing a family. It is also necessary to observe the calculations regarding the amount of the death pension benefit to prevent it from being granted with an amount below what is due.

In view of what has been presented, it is possible to affirm that through the documents listed, the person who lives socially in a stable union is able to obtain the social security benefit of pension for rural death, following the requirements and meeting the criteria that are presented, guaranteeing him/her as a partner or dependents, if any, financial help for being the deceased insured special.



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