

MATRIMONIAL PROPERTY REGIMES

Sources : Art. 1387 et seq. of the Belgian Civil Code + provisions of the primary regime (Art 214 et seq. of the Belgian Civil Code)

I - Statutory regime (in the absence of a prenuptial agreement): community of after-acquired property

Definition of joint property (Art. 1405 Belgian Civil Code)

Property acquired during the marriage; income; indemnities.

All property that is not proven to be the property of one of the spouses by application of a provision of the law is joint property.

Definition of personal property: (Art. 1400 and 1401 Belgian Civil Code)

Accessories to personal property or rights,

Property transferred to one of the spouses by one of his or her ascendants either to pay him or her an amount owed, or to pay a debt of the ascendant to a third party,

The share acquired by one of the spouses in a property of which he or she is already a co-owner,

Property and rights in lieu of personal property as well as property acquired for use or reuse,

The cash surrender value of a life insurance policy taken out by one of the spouses under certain conditions,

Clothes and linen for personal use,

Literary, artistic or industrial property rights,

Entitlement to pensions, life annuities or allowances of which only one of the spouses is the holder,

The rights resulting from the status of partner under certain conditions,

Professional property used by one of the spouses for the exercise of his or her profession,

The right to customers,

The indemnity paid to a spouse as compensation for damage under certain conditions.

Administration and disposal of joint and personal property

Management includes all powers of administration, enjoyment and disposal. The spouses manage their joint property in the interests of the family (Art.1415 Belgian Civil Code). Joint property may be managed by either spouse.

The consent of both spouses is required to acquire, transfer or encumber with rights in rem property liable to mortgage, acquire, assign or pledge goodwill or operations of any kind, conclude, renew or terminate leases of more than nine years, grant commercial leases or farm leases, assign or pledge mortgage claims, collect the price for the transfer of immovables or the repayment of mortgage loans, discharge registered charges, accept or refuse a bequest or donation where it is stipulated that the property bequeathed or donated will be joint, or take out a loan (Art. 1418 Belgian Civil Code).

A spouse may not, without the consent of the other, dispose inter vivos of property forming part of their joint property free of charge (Art. 1419 Belgian Civil Code).

Each spouse has the exclusive management of his or her own assets (Art. 1425 Belgian Civil Code).

Definition of joint liabilities and each spouse's personal liabilities (Art. 1409 et seq. Belgian Civil Code)

A debt incurred by to one of the spouses may be recovered only out of his or her personal assets and income.

Joint debts may be recovered both out of each spouse's personal property and out of their joint property. However, no claim may be made against the personal assets of the spouse who has not incurred the debt for the payment of: debts incurred by one of the spouses for the needs of the household and the education of the children where they entail excessive burdens having regard to the household's resources; interest which is ancillary to the debts of one of the spouses; debts incurred by one of the spouses in the exercise of his or her profession; maintenance debts for the benefit of the descendants of only one spouse (Art. 1414 Belgian Civil Code).

Compensation principle: (Art. 1432 et seq. Belgian Civil Code)

Compensation is due where one spouse's personal debt is paid out of their joint property.

Whenever a spouse contributes their personal property to the couple's joint property, they must be compensated out of the joint property.

The compensation cannot be less than the reduction in the creditor's assets. However, if the sums and funds added to the debtor's assets have been used to acquire, conserve or improve a property, the compensation shall be equal to the value or capital gain made by that property, either on the dissolution of the regime if it is part of the debtor's assets at that time, or on the day of the transfer if it was transferred previously; if a new property has replaced the transferred property, the compensation shall be calculated based on the new property (Art. 1435 Belgian Civil Code).

Dissolution of the community

The community is dissolved: by the death of one of the spouses; by divorce and legal separation; by judicial separation of property, by the adoption of another matrimonial property regime (Art. 1427 Belgian Civil Code).

Liquidation of the community

Calculation of any compensation owed to each spouse; payment of liabilities, division of net assets (Art. 1430 Belgian Civil Code).

II - Contractual regimes

Form of prenuptial agreements and formalities

Deed drawn up by a notary to be signed before the marriage and registered in the Central Register of Prenuptial Agreements by the notary.

Freedom of contract

The spouses shall set the terms of their prenuptial agreements as they see fit, provided that they do not contain any provision contrary to public policy or morality (Art. 1387 Belgian Civil Code).

1° Adjustment of the community regime

Broadening of the property covered by joint ownership, matrimonial advantages in the event of death, unequal sharing (Art. 1451 Belgian Civil Code) but no exemption from the rules for the management of joint and personal property.

2° Universal community: (Art 1452 et seq. Belgian Civil Code)

All present and future movable and immovable property forms part of the community, with the exception of property of a personal nature and rights exclusively attached to the person. The universal community bears all the spouses' debts without exception.

3° Separation of property: (Art. 1466 et seq. Belgian Civil Code)

Each spouse alone has full powers of administration, enjoyment and disposal of his or her property

4° Separation of property with participation in after-acquired property: (art. 1469 et seq. Belgian Civil Code)

Each spouse retains the right to administer, enjoy and dispose freely of his or her personal property. For the duration of the marriage, this regime operates as if the spouses were married under the separation of property regime. In a separation of property with participation in after-acquired property regime, acquisitions are the difference between a spouse's final and original assets. On dissolution of the matrimonial property regime, the share of profits is calculated based on the after-acquired property of each spouse.

Change of matrimonial property regime

It is possible to change or adjust one's matrimonial property regime during the course of the marriage (Art. 1394 Belgian Civil Code).