



MATRIMONIAL PROPERTY REGIMES

Spain does not recognize the unity of civil law. Several provinces in Spain are still subject to provincial law (regional civil law) and a distinction must be made between the statutory regime of the Spanish Civil Code and the regime of the provinces subject to provincial law: Catalonia, the Balearic Islands, Aragon, Vizcaya, Navarre, Extremadura, Galicia and the Community of Valencia.

I - Matrimonial property regimes described in the Spanish Civil Code

Sources: Art. 1318 et seq. of the Spanish Civil Code

1. Statutory regime

(in the absence of a prenuptial agreement): joint ownership of after-acquired property, similar to community of property (sociedad de gananciales).

Definition of joint property (Art. 1347 Spanish Civil Code)

Property acquired during the marriage; income; fruits of personal property and acquisitions.

Any movable or immovable property is deemed to be a joint acquisition (Art. 1361 Spanish Civil Code).

Definition of personal property (Art. 1346 Spanish Civil Code)

Property and rights acquired before community of after-acquired property was established

Property acquired free of charge

Property acquired to replace personal property

Property acquired by right of withdrawal belonging to only one spouse

Compensation paid for harm caused to one of the spouses

Linen, clothing and objects for a spouse's personal use (without extraordinary value)

Equipment necessary for the exercise of a spouse's profession unless it forms part of an establishment treated as joint property.

Administration and disposal of joint and personal property

Joint assets are jointly administered by both spouses (Art. 1375 Spanish Civil Code)

However, each spouse may administer their joint property alone in the context of exercising family authority (Art. 1319 and 1365 Spanish Civil Code), with the exception of the family home.

Each spouse administers his or her personal assets. There are, however, special provisions concerning the family home, under which the consent of both spouses is always required (Art. 1320 Spanish Civil Code).

The consent of both spouses is required for the transfer of joint property, although in certain circumstances, the consent of the courts may suffice (Art. 1377 Spanish Civil Code).

The consent of both spouses is always required for an action without consideration, failing which the action will be null and void (Art. 1378 Spanish Civil Code).

Each spouse may dispose freely of his or her own assets.

Definition of joint liabilities and each spouse's personal liabilities - Guarantees for creditors

Each spouse's personal debts are his or her sole responsibility and can only be settled out of their personal property. Where said personal property is insufficient, creditors make a claim against the debtor spouse's share of the joint property (Art. 1373 Spanish Civil Code).

The joint property (gananciales) covers matrimonial expenses (Art. 1318 Spanish Civil Code) and the needs of the family. Debts contracted by one of the spouses for the maintenance of the household may be settled out of joint property, the personal property of the debtor spouse and on a subsidiary basis, the personal property of the other spouse (Art. 1319 Spanish Civil Code).

Dissolution of the community - Liquidation of the community: (Art. 1392 and 1393 Spanish Civil Code)

The causes of dissolution of the community are annulment of the marriage, judicial separation, divorce, death, judicial declaration of incapacity, being declared missing, commercial or civil bankruptcy of one of the spouses or his or her conviction for abandonment of the family.

Principle of equal shares of the joint property (Art. 1404 Spanish Civil Code)

A spouse who has settled joint debts using his or her personal property is entitled to reimbursement from the joint property (Art. 1364 Spanish Civil Code).

2. Contractual regimes

These may be community of property (sociedad de gananciales), separation of property or participation in after-acquired property.

Form of prenuptial agreements

A prenuptial agreement must be in the form of a deed drawn up by a notary (Art. 1315 Spanish Civil Code). It can be concluded before or during the marriage. It must be recorded on the civil status register of the spouses' habitual place of residence.

Separation of property regime (Art. 1435 to 1444 Spanish Civil Code)

Each spouse retains ownership of his or her property and becomes the sole owner of the property he or she acquires during the marriage.

Where ownership of an item of property cannot be established, each spouse is presumed to own half of it.

Participation in after-acquired property regime (Art. 1411 to 1434 Spanish Civil Code)

Each spouse retains ownership of his or her property and becomes the sole owner of the property he or she acquires during the marriage. Each spouse is entitled to receive a share of the acquisitions made by the other spouse, for as long as the regime remains in place. Acquisitions are calculated at the point of the dissolution of the regime or when the marriage ends.

Under the regime of separation of property or participation in after-acquired property, one spouse is not responsible for the debts of the other and each spouse is free to transfer his or her property, except for the family home (Art. 1320 Spanish Civil Code).

Changes of regime

The spouses may amend a prenuptial agreement as long as the formal requirements are met (Art. 1331 Spanish Civil Code). However, an amendment may not affect rights already acquired by third parties (Art. 1317 Spanish Civil Code).

II - Matrimonial property regimes in ARAGON, CATALONIA, BALEARIC ISLANDS, NAVARRE, BASQUE COUNTRY, GALICIA and VALENCIA

ARAGON

Spouses are free to choose their matrimonial property regime (Art. 195 Civil Code of the Community of Aragon). In the absence of a prenuptial agreement, the community of property regime (matrimonial community) applies (Art. 210 to 270 Civil Code of the Community of Aragon).

Separation of property or community of property can be determined in an agreement drawn up by a notary.

Prenuptial agreements concluded during the course of the marriage may have retroactive effect without prejudice to rights acquired by third parties. This retroactive effect does not exist in the general regime of the Spanish Civil Code. Dowries are a common feature in Aragon. They may be constituted by the ascendant relatives of both husband and wife and by each spouse for the other.

CATALONIA

In the absence of a prenuptial agreement, the separation of property regime applies (Art. 231-10 Civil Code of the Community of Catalonia). It is governed by Articles 231-11 to 231-30 of the Civil Code. The freedom to choose the terms of the agreement is extensive. It is possible to opt for participation in after-acquired property. Prenuptial agreements are known as “espolits”.

A prenuptial agreement may be made before or during the marriage by means of a deed drawn up by a notary, without involving the courts.

BALEARIC ISLANDS

In the absence of a prenuptial agreement, the separation of property regime applies (Article 67 of the Uniform Laws of the Community of the Balearic Islands); the freedom to choose the terms of the agreement is extensive. It is possible to opt for participation in after-acquired property. Prenuptial agreements are known as “espolits”.

A prenuptial agreement may be made before or during the marriage by means of a deed drawn up by a notary, without involving the courts.

NAVARRRE

Spouses may opt for the separation of property or universal community of property regimes. In the absence of a prenuptial agreement, the community of after-acquired property regime applies. This is similar to the sociedad de gananciales of the Spanish Civil Code (Act 82 of the Uniform Laws of the Community of Navarre); prenuptial agreements can be concluded before or during the marriage by a deed drawn up by a notary, with the possible choice of family ownership of after-acquired assets, universal community or separation of property.

BASQUE COUNTRY

In accordance with articles 93 to 111 of the Civil Code of the Community of the Basque Country, spouses are free to conclude a prenuptial agreement. In the absence of a prenuptial agreement, a regime close to universal community of property applies; it is regulated by Art. 93 to 111 of the Civil Code of the Community of the Basque Country. However, in regions that are exempt (Art. 6 of the Civil Code of the Province of Bizkaia), Spanish common law applies in the absence of an agreement.

The administration of property follows the Civil Code regime of community of after-acquired property. The spouses may choose another matrimonial property regime by means of an agreement before or during the marriage, drawn up by a notary without involving the courts if the change occurs during the marriage.

GALICIA

The applicable regime is determined by the prenuptial agreement. In the absence of an agreement, the regime of community of property or after-acquired property applies (Art. 171 of the Civil Code of the Community of Galicia); matrimonial agreements made by a deed drawn up by a notary before or during the marriage may contain provisions on inheritance.

VALENCIA

Spouses have complete freedom and equality and are free to enter into a prenuptial agreement. In the absence of an agreement, the regime of separation of property applies (Matrimonial Property Regime of the Community of Valencia Act).