

MATRIMONIAL PROPERTY REGIMES

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

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

Definition of joint property

Property acquired during the marriage; income.

Any movable or immovable property is deemed to be a joint acquisition.

Definition of personal property

Inherent personal property: clothing and linen for the personal use of one of the spouses, actions for compensation for bodily injury or non-pecuniary harm, non-transferable debts and pensions, property which is personal in character and all rights exclusively attached to the person, work equipment necessary for the profession of one of the spouses, unless it is accessory to a business or holding which is part of the community.

Property which the spouses owned or possessed on the day of the marriage was solemnized, or which they acquire during the marriage by inheritance, gift or bequest.

Property acquired as an accessory to personal property as well as securities and other increases attached to personal movable securities. Claims and indemnities that replace personal claims and indemnities as well as property acquired for use or reuse in accordance with Articles 1434 and 1435.

Property acquired in exchange for property that was owned by one of the spouses.

The acquisition, by way of auction or otherwise, of a portion of property owned by one of the spouses in undivided co-ownership does not constitute an acquisition, except for the set-off due to the community for the amount raised.

Administration and disposal of joint and personal property

Each of the spouses has the power to administer the joint property alone.

Spouses may not, without each other, dispose of joint property inter vivos free of charge.. Neither may they, without each other, assign any of this property to secure the debt of a third party (Art. 1422 French Civil Code).

The spouses may not, without each other, transfer or encumber with rights in rem the real estate, business, exploitation or non-negotiable social rights dependent on the community (Art. 1424 French Civil Code).

The spouses may not, without each other, lease any rural land or land for commercial, industrial or artisanal use dependent on the community (Art. 1425 French Civil Code).

Each spouse may administer and enjoy his or her personal property and may dispose of it freely (Art. 1428 French Civil Code); however, in the case of sale of the family home, the agreement of both spouses is required under Art. 215 French Civil Code (primary regime).

Definition of joint liabilities (Art. 1409 French Civil Code)

The community bears all debts relating to maintenance and expenses for the upkeep of the household and the education of the children in accordance with Article 220 of the French Civil Code. It also bears other debts arising during the community, subject to any set-offs due to one of the spouse's personal assets.

Definition of each spouse's personal liabilities (Art. 1410 French Civil Code)

The debts for which the spouses were liable on the day of the solemnization of their marriage or with which the estates and gifts falling to them during the marriage are encumbered, remain personal to them.

Rights of creditors (cf. Art. 1413 to 1415 French Civil Code)

The payment of debts for which each spouse is liable for any reason whatsoever, during the community, may always be pursued out of the joint property (except in cases of fraud by the debtor spouse and bad faith by the creditor) subject to any set-off to the community required.

A spouse's earnings and wages may be seized by his or her spouse's creditors only if the obligation was incurred for the maintenance of the household or the education of the children in accordance with Article 220 of the French Civil Code. Each spouse may commit only his or her own property and income by way of a bond or loan unless the other spouse consents to such bonds or loans.

Set-off principle

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. This is the case, in particular, when it has received its own money or money from the sale of its personal property, without it having been used or reused.

The set-off is usually equal to the lesser of the expense incurred and the remaining profit. (Art. 1469 French Civil Code).

Dissolution of the community

The community is dissolved: by the death of one of the spouses; if one of them is declared missing; by divorce; by legal separation; by change of matrimonial regime (Art. 1441 French Civil Code).

Liquidation of the community

Each spouse takes back his or her personal property or property subrogated to his or her personal property (Art. 1467 French Civil Code); joint assets and liabilities are then liquidated and any set-offs calculated.

II - Contractual regimes

Form of prenuptial agreements

Notarized deed to be signed before the marriage. Its existence will be noted on the marriage certificate.

Freedom of contract

The future spouses may decide on the rules of their marital relationship with regard to their property as they see fit, provided that their agreement is not contrary to good morals and the provisions of the French Civil Code.

1° Adjustment of the community regime

Broadening of the property falling under the community, derogation from the rules of administration, matrimonial benefits in the event of death, unequal sharing (Art. 1497 French Civil Code; Art. 1515 et seq. French Civil Code).

2° The community of movables and after-acquired property (Art. 1497, 1498 and 1499 French Civil Code)

The joint assets include, in addition to the property that would form part of it under the statutory community regime, the movable property which the spouses owned or possessed on the day of the marriage or which has since come to them by inheritance or gift, unless the donor or testator has stipulated otherwise.

3° Joint ownership of all property: (Art. 1526 French Civil Code)

All present and future movable and immovable property forms part of the community, except property which is personal by nature (unless otherwise stipulated by the spouses). Under this regime, all of the spouses' present and future debts are settled out of their joint assets.

4° Separation of property: (Art. 1536 French Civil Code)

Each spouse retains the right to administer, enjoy and dispose freely of his or her personal property. Each of them remains solely liable for the debts incurred by them before or during the marriage, except in the case of Article 220 (debts incurred for the maintenance of the household or the education of the children).

5° Sharing of after-acquired property: (Art. 1569 et seq. French 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. On the dissolution of the regime, each spouse is entitled to share half the value of the net after-acquired property recorded in the other spouse's assets, measured by estimating the value of the original and final assets.

Change of matrimonial property regime

It is possible to change or adjust one's matrimonial property regime during the course of the marriage (Art. 1397 French Civil Code).