

MATRIMONIAL PROPERTY REGIMES

Sources: basic rules common to all spouses (Art. 143 to 148 of the Italian Civil Code) + Art. 159 et seq. of the Italian Civil Code on matrimonial property regimes

Rules common to all spouses: contribution by the spouses to the expenses of the marriage in proportion to their respective abilities, obligation of the spouses to support and educate the children.

I - Statutory regime (in the absence of a prenuptial agreement): community of property (Art. 159 Italian Civil Code)

Statutory community of property provides for the existence of joint property, personal property and deferred joint property.

(Since the reform of family law of 19 May 1975, which came into force on 20 September 1975, the statutory regime in Italy has been community of property. This replaced the statutory regime of separation of property. The community of property regime applies to all couples, even those married before the reform, unless the spouses expressly stated otherwise before 15 January 1978 in a deed drawn up by a notary or before the registrar of the place where the marriage was solemnized).

Definition of joint property

Property acquired by the spouses during the marriage, individually or together, becomes part of their common property, with the exception of personal property and property that falls under deferred joint property (Art. 177 Italian Civil Code).

In the absence of proof to the contrary, movable property is considered part of joint property (Art. 195 Italian Civil Code).

Deferred joint property

The fruits of a spouse's personal property and his or her personal activities, provided that they still exist at the time of the dissolution of the community of property (Art. 177 b and c Italian Civil Code).

Property used for the operation of the business of one of the spouses if the business was established during the marriage, and the profits of a business established before the marriage, provided that they still exist at the time of the dissolution of the community of property (Art. 178 Italian Civil Code).

If a business is set up or acquired during the marriage by only one of the spouses and is managed by him or her alone, the property allocated to its exercise and any increases will only be classed as joint property if it still exists at the time of the dissolution of the community as well as the separate income of each of the spouses (Art. 177 Italian Civil Code).

Deferred joint property arises at the time of the dissolution of the community of property and consists of a right for one spouse to be paid by the other (the owner), in an amount equal to half the value of the property.

Definition of personal property

Property acquired before the marriage or before the adoption of the community of property regime.

Property acquired during the marriage by gift or inheritance, unless it has been specified in a deed of gift drawn up by a notary or a will that the property is to be treated as joint property.

Property for strictly personal use and ancillary items.

Property necessary for one of the spouses to exercise his or her profession (if acquired during the marriage, this property, in order to be treated as personal, must be declared excluded from the community of property in the deed of purchase, with the agreement of the other spouse – Art. 179 Italian Civil Code)

Property received as compensation, as well as any pension related to partial or total incapacity to work.

Property acquired with the proceeds of sale or following an exchange of personal property, provided that this is explicitly stated at the time of acquisition, with the agreement of the other spouse.

Ancillary items of personal property are not part of the community of property.

Administration of joint and personal property

Joint property may be managed individually by the spouses (Art. 180 Italian Civil Code)

However, the performance of acts of extraordinary management and the conclusion of contracts by which personal rights of enjoyment are granted or acquired, accrue to both spouses together.

For personal property and deferred joint property, the owner may carry out all acts of management and transfer alone (Art. 185 Italian Civil Code).

A spouse may not dispose of his or her share of joint property before the statutory dissolution of the community of property regime.

Each spouse has the enjoyment, administration and free disposal of his or her own property.

Personal and joint liabilities – rights of creditors

Joint property must cover the obligations entered into in the interests of the family, even if one of the spouses has entered into them alone (Art. 186 Italian Civil Code).

The personal creditors of one of the spouses, even if the debt existed before the marriage, may make a subsidiary claim against the joint property, up to a value corresponding to the indebted spouse's share (Art. 189 Italian Civil Code)

The creditors of joint debts may make a claim against the personal property of each spouse, up to the value of half the amount due, if the joint property is not sufficient (Art. 190 Italian Civil Code).

Dissolution and liquidation of community property

In the event of dissolution of the statutory regime of community of property (Art. 191 Italian Civil Code: change of regime, separation, divorce, death), the property is divided equally, after any pending reimbursement or payment has been made (Art. 191 et seq. Italian Civil Code); each spouse must reimburse to the joint property the sums he or she has taken from it and which have not been used to meet joint obligations. Each of the spouses may claim the reimbursement of the sums that have been taken from their personal property and used for the benefit of the joint property (Art. 192 Italian Civil Code).

II - Contractual regimes

The law provides for two types of traditional matrimonial property regimes: separation of property and community of property.

The community of property regime can be modified by an agreement between the spouses (Art. 210 Italian Civil Code).

A prenuptial agreement must be concluded in the presence of two witnesses in the form of a deed drawn up by a notary. The decision to choose the separation of property regime can be recorded in a prenuptial agreement or stated on the marriage certificate (Art. 162 Italian Civil Code).

The agreement can be concluded at any time before or during the marriage. Its existence will appear in the margin of the marriage certificate.

Separation of property

Each spouse retains exclusive ownership and the right to use and manage the property acquired before and during the marriage without exception, and must pay his or her own debts using his or her property (Art. 215 and 217 Italian Civil Code).

Amendment of the community of property regime

The traditional community of property regime can be adjusted in terms of what is considered community property, but within certain limits. The spouses may not derogate from the regulations on the management of their joint property nor from the principle of equal shares when the community is liquidated (Art. 210 Italian Civil Code).

Protected fund

The protected fund is not a matrimonial property regime but a fund that is earmarked to meet the needs of the family, with special protection provided for minor children (Art. 167 et seq. Italian Civil Code).

The constitution of the protected fund is subject to complex regulations; it may be set out in a prenuptial agreement between the spouses or be constituted by a unilateral deed, drawn up by a notary in the presence of two witnesses, by the spouse who owns the property to be appropriated, or it may be constituted by a third party who transfers the ownership or enjoyment of property belonging to them in the form of a notarial act or by will, accepted by the spouses.

These assets are subject to specific regulations regarding their management.

The protected fund will end on the annulment or dissolution of the marriage. If there are minor children, the fund will continue to exist until the youngest child reaches the statutory age of majority.

Specific regime for family businesses

Art. 230 bis of the Italian Civil Code lays down specific rules for family businesses allowing, in particular, the spouse and family members working in the business to benefit from its profits.

Change of matrimonial property regime

The agreement may be modified at any time by a deed drawn up by a notary (Art. 163 Italian Civil Code) without judicial authorization, except for modifications to agreements concluded before 7 May 1981.