



## MATRIMONIAL PROPERTY REGIMES

**Sources :** Art 1 : 85 and seq. of the Dutch Civil Code (rules applicable regardless of the matrimonial property regime) + Art 1: 93 et seq. on matrimonial property regimes

**I - Statutory regime (in the absence of a prenuptial agreement): For marriages solemnized on or after 1 January 2018, limited community of property and before that date, joint ownership of all property**

### New statutory regime of community of property:

#### Definition of joint property

Property acquired during the marriage and the debts associated with it form part of the community of property (Art. 1: 94 BW).

The community of property includes property owned jointly by the spouses before their marriage (for example, when they lived together).

#### Definition of personal property

Property acquired by inheritance or gift; certain annuities paid out in respect of pension rights.

Assets which fall exclusively under the personal assets of one of the spouses cannot also be included in the community of property (see Art. 1: 94 para. 5 BW).

The fruits of assets belonging to each spouse are also excluded from the community of property (Art. 1: 94 para. BW).

#### Administration and disposal of joint and personal property

Assets acquired as personal property are administered by the spouse in whose name they were acquired. All other assets belonging to the community of property may be administered separately by each spouse (Art. 1: 97 BW).

The marital home may only be transferred with the consent of both spouses (Art. 1: 88 BW). Consent is also required for taking out a mortgage on the marital home.

#### Definition of joint liabilities

All debts incurred by each of the spouses, with the exception of those relating to their own assets, also belong to the community of property and must be paid out of it (Art. 1: 94 para. 7 BW).

Each spouse is jointly and severally liable with the other spouse for the debts of the household and the costs of care and education of the children during the marriage (Art. 1: 85 BW). This rule applies regardless of the regime under which the spouses were married.

Where a spouse has settled a debt connected with the community of property using his or her private assets, he or she is entitled to compensation (Art. 1: 95 BW).

#### Definition of each spouse's personal liabilities

The private debts of one spouse may be paid out of the community during the marriage, but the other spouse has the right to inform the creditor of the debtor spouse's personal assets that could enable the debt to be settled.

When a private debt is settled out of the community of property, the debtor spouse is obliged to compensate for the transaction by a contribution to the community of property (Art. 1: 96 para. 4 BW)

### **Liquidation of the community**

After the dissolution of the community of property, each spouse may request the recovery of his or her clothing, jewellery, professional equipment, documents and family souvenirs (Art. 1: 101 BW).

In principle, each spouse is entitled to half the assets. The community of property may be divided by the distribution of assets in kind or the payment of compensation in cash.

## **II - Contractual regimes**

The underlying principle is freedom to choose the content of the agreement. In practice, the choice will most often be between a limited community of property and separation of property, often combined with set-off conditions. A distinction should be made between the periodic set-off clause and the final set-off clause, which occurs when the marriage breaks down.

### **Prenuptial agreements**

It is impossible to exclude maintenance claims or to limit the rules for the protection of the family (e.g. the other spouse's agreement to sell the family's home cannot be dismissed) by means of a prenuptial agreement (Art 1:88 BW)

### **Form of prenuptial agreements**

A prenuptial agreement must take the form of a deed drawn up by a notary. It must be entered on the public register of the place where the marriage is solemnized.

A prenuptial agreement may be concluded before or during the marriage (Art. 1:114 BW).

### **Change of matrimonial property regime**

It is possible to change the agreement during the marriage.