



MATRIMONIAL PROPERTY REGIMES

Primary regime or mandatory rules applicable to all regimes: Portugal has adopted mandatory rules concerning the contribution to the costs of the marriage, joint liability for household debts, protection of the family home, free exercise of a profession, management of bank accounts, representation between spouses and protection against acts endangering the interests of the family.

Spouses married before 1 June 1967 remain subject to the previous statutory regime of joint ownership of all property. Since 1 June 1967 the Portuguese statutory regime has been joint ownership of assets acquired after the marriage.

Separation of property as a statutory regime (special case): Separation of property is a compulsory statutory regime that applies if the spouses marry without prior notice and when one of the future spouses is 60 years old. It also applies if one of the spouses has children from a previous marriage (Art. 1720 of the Portuguese Civil Code).

I - Statutory regime: Art 1717 of the Portuguese Civil Code: community of property

Joint assets

Community of property includes the following elements:

The spouses' income from work and any property acquired by the spouses during the marriage that is not excluded from joint ownership by law (Art. 1724 of the Portuguese Civil Code)

Movable property is presumed to be part of the community of property (Art. 1725 of the Portuguese Civil Code)

Joint assets

The property held by each spouse at the time the marriage is solemnized;

Any property acquired by a spouse during the marriage by way of inheritance or gift;

Property acquired during the marriage by virtue of previously acquired rights (Art. 1722 and 1723 of the Portuguese Civil Code).

Property subrogated to the spouse's own property or its transfer price; property acquired for re-investment if the deed of purchase or a subsequent deed signed by both spouses mentions re-investment;

The undivided share of a property belonging to one of the spouses even if this acquisition was made with joint funds (in return for compensation);

Administration of joint and personal assets

In principle, each spouse may carry out the day-to-day management of their joint property.

However, the consent of both spouses is required for the valid transfer of certain joint property, immovable or commercial establishments and rights to the family's housing, whether personal or joint. Waiving the right to an estate or bequest requires the consent of the spouse.

The consent of both spouses is required to encumber or dispose of real property.

Each spouse administers his or her own assets independently. In addition, each spouse administers the following assets exclusively, even where they form part of the community of property:

The income received for their work;

Their copyright;

The assets in the community of property which they have contributed to the marriage or which they have acquired free of charge during the marriage, as well as all the rights attached thereto by subrogation;

The movable property belonging to the other spouse or to the community of property that is used exclusively by one of the spouses for work;

The property belonging to the other spouse, where the other spouse is incapable of administering it because it is situated in a remote or unknown location or for any other reason, and provided that no appropriate power of attorney has been granted for the administration of that property;

Property belonging to the other spouse when the latter has granted a mandate to that effect (Art. 1678 of the Portuguese Civil Code)

Liabilities

The following debts are the responsibility of both spouses:

Debts contracted before or during the marriage by both spouses or one of them with the consent of the other (Art. 1691 of the Portuguese Civil Code)

Debts contracted before or during the marriage by both spouses to cover normal family expenses (Art. 1691 of the Portuguese Civil Code)

Debts contracted during the marriage by the spouse responsible for the administration of the community of property for the benefit of the couple and within the limits of his or her administrative powers (Art. 1691 of the Portuguese Civil Code)

Debts contracted by either spouse in the course of a commercial activity, unless it can be proved that those debts were not contracted for the common benefit of the couple or where the regime of separation of property applies (Art. 1691 of the Portuguese Civil Code)

Debts on donations, inheritances or bequests, when the assets concerned now belong to the community of property (Art. 1691 and 1693 of the Portuguese Civil Code)

Dissolution and liquidation of community property

When the community property is dissolved, it is divided equally between the spouses after the payment of any sums due to each.

Sharing and liquidation

Each spouse takes back their personal assets.

Debts and any sums due to each spouse are calculated and paid.

Finally, each spouse receives half of the community property. The equal shares rule is mandatory. Any agreement that provides otherwise is null and void (Art. 1730 of the Portuguese Civil Code).

Joint debts are also shared as part of the sharing of community property. However, this sharing is only enforceable against creditors with their consent

II - Contractual regimes: The spouses may draw up a prenuptial agreement before the marriage

Prenuptial agreements

- a. Joint ownership of all property: this is not an option, however, when one or both spouses already has (have) children who are not the children of both spouses. Under this regime, all current and future property belonging to the spouses forms part of the community of property, except for property excluded by law (Art. 1732 of the Portuguese Civil Code). This is the case, for example, for property received by way of gift or bequest when it is stipulated that it must be excluded from the community of property, personal rights or family souvenirs of low value (Art. 1733 of the Portuguese Civil Code).
- b. Separation of property, which is mandatory when one or both spouses are 60 years of age or older. Under this regime, each spouse retains the management of and rights over his or her current and future assets, and may dispose of them freely (Art. 1735 of the Portuguese Civil Code)
- c. Any other regime: the spouses may choose a regime that combines features of different matrimonial property regimes.

Form of the prenuptial agreement

A prenuptial agreement must take the form either of a deed drawn up by a notary or of a document drawn up by the registrar of civil status (Art. 1710 of the Portuguese Civil Code). It is registered in the civil status register of the place where the marriage is solemnized (Art. 190 of the Portuguese Civil Code).

The prenuptial agreement must be concluded before the marriage and comes into force when it is solemnized

Change of matrimonial property regime

The principle of the immutability of matrimonial property agreements is contained in Art. 1714 of the Portuguese Civil Code. The matrimonial property regime may not be modified after the marriage is solemnized.