

THE STATUTORY MATRIMONIAL PROPERTY REGIME (in the absence of a marriage contract)

Introduction

The following comparative tables concern member countries of the LEXUNION network. The first table identifies the statutory matrimonial property regime applicable to heterosexual or homosexual couples in each country. In other words, these are the rules that govern property relations within a couple where there is no marriage contract. This first table also sets out the possible alternatives. The second table gives a brief overview of the main characteristics of the statutory matrimonial property regime in each of the countries, as well as the rules applicable to the division of property when the matrimonial regime is dissolved, either in the event of the death of one of the parties, through divorce or where the regime is changed following the signing of a marriage contract.

Aim of this Fact Sheet

This Fact Sheet No. 3 (2022) therefore aims to present **an overview of the various matrimonial property regimes applicable in the absence of a marriage contract in all member countries of the LEXUNION network.**

The next fact sheets will present the conventional matrimonial property regimes in those countries and then the rules applicable in an international context, in order to clearly set out the set of choices available to spouses.

By reference to these three Fact Sheets, you will be able to:

- Gain an overview of the various matrimonial property regimes;
- Understand the possible implications of signing a (new) marriage contract, for example spousal protection or estate planning;
- Understand the options offered by EU Regulations 2016/1103 and 1104 on the choice of law applicable to matrimonial or property regimes, in an international context.

Please consult the professionals in the LEXUNION network who will look at your particular situation and advise you on the issues concerned and opportunities available to you.

Abbreviations

N/A: Not applicable

CC: Civil Code








Legal notice : This Fact Sheet provides general legal information intended to give an overview of the legislation applicable to the matters discussed in the various LEXUNION member countries. We check the accuracy of the information contained in this sheet and we will correct any errors that are reported to us. However, the information contained in this document cannot under any circumstances be construed to constitute individual advice for which the author may be liable in any way whatsoever.








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	 BELGIUM	 SPAIN COMMON LAW* CATALONIA	 FRANCE	 ITALY	 NETHERLANDS	 SWITZERLAND	 UNITED KINGDOM	
General								
Is same-sex marriage permitted?	✓ Yes	✓ Yes	✓ Yes	✓ Yes	No, but an "Unione Civile" (Law no. 76 of 20 May 2016) gives the same property rights	✓ Yes	Yes, from 1 July 2022, same-sex couples will be able to marry or convert their registered partnership* into a marriage	✓ Yes
What is the statutory matrimonial property regime?	Community of property	Community of after-acquired property	Separation of property	Community of after-acquired property	Statutory community of property	Limited community of property	Sharing of after-acquired property	There is no matrimonial regime
When did the statutory regime come into effect?	28/09/1976	13/05/1981	13/08/1960	01/02/1966	20/09/1975 (*)	01/01/2018	01/01/1988	N/A
What was the statutory regime for married couples before that date?	Community of movable property and after-acquired property	Community of acquisitions ("Sociedad de gananciales")	Community of acquisitions ("Sociedad de gananciales")	Community of movable property and after-acquired property	Separation of property	Universal community of property	Union of property	N/A
Change of matrimonial regime								
Is it possible to change regime?	✓ Yes	✓ Yes	✓ Yes	✓ Yes	✓ Yes	✓ Yes	✓ Yes	N/A
Is there a minimum period of time before the regime can be changed?	✗ No	✗ No	✗ No	✗ No	✗ No	✗ No	✗ No	N/A
What form is required?	Notarial authentic deed	Notarial authentic deed	Notarial authentic deed	Notarial authentic deed	Notarial authentic deed	Notarial authentic deed	Notarial authentic deed	N/A
Are there any particular requirements or additional formalities (witnesses, third party intervention, court intervention, notification, etc.)?	An inventory of assets is required where the change to the matrimonial property regime brings about the liquidation of the existing regime. (For example, this is the case for jointly owned assets when switching from a community of property regime to a separation of property regime)	Aside from the mandatory presence and participation of the parties to the modified contract, the law sets out no particular requirements. The regime change will not however affect the rights acquired by third parties (such as creditors) under the previous regime.	Aside from the mandatory presence and participation of the parties to the modified contract, the law sets out no particular requirements. The regime change will not however affect the rights acquired by third parties (such as creditors) under the previous regime.	Notification to: * Children of adult age * Parties to the modified contract * Creditors: publication in a journal of legal notices. Requirements where there is a minor child under: - Guardianship: notification to their representative. - Legal administration: the notaire may refer the matter to the guardianship judge if it is believed that the proposed change may manifestly and materially damage the minor's interests or cause them serious harm.	Presence of 2 witnesses	No	Instrument signed by the parties	N/A
Effective date								
Between the parties	Date of the deed	Date of the deed	Date of the deed	Date of the deed or of the court judgment where the matter needs to be referred to the court	Date of the deed	Day after the signing of the deed	Date of the deed but possibility of retrospective application	N/A
As against third parties	Date of entry in the Central Register of Marriage Contracts (CRH)	Date of registration in the Civil Register	Date of registration in the Civil Register	3 months after an entry is made in the margin of the marriage certificate (registered at the civil registry office) <small>If no such entry is made, the change is enforceable against third parties if the parties have declared that they have changed their matrimonial regime (e.g. publication of a notice in a journal for legal notices).</small>	Date of registration in the Civil Register	Date of publication in the Matrimonial Property Register (huwelijksgoederenregister)	Date of the deed Creditors are however protected by Article 193 of the Swiss CC.	N/A
		(*) Common Law applies to the whole of Spain, except for the regions with their own rules on matrimonial regimes: Aragon, Balearic Islands, Basque Country, Catalonia, Galicia, Navarre and Valencia Community		(*) Before 25.03.2019, it was necessary to wait until the regime had been in operation for 2 years before changing it	(*) There are specific rules for the transition period between 20.09.1975 and 15.01.1978	(*) New registered partnerships will no longer be possible.		

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Main characteristics								
Number of groups of assets / names	3 groups: - the separate assets of each spouse, and - their jointly owned assets	3 groups: - the separate assets of each spouse, - their jointly owned assets	2 groups: - the separate assets of each spouse. (Property whose ownership is uncertain is assigned as jointly owned property on a 50/50 basis)	3 groups: - the separate assets of each spouse, and - their jointly owned assets	4 groups: - the separate assets of each of the spouses, and - their jointly owned assets, and - assets (e.g. business assets) that the owner alone can dispose of but whose value is included in the jointly owned assets at the time the community is dissolved ("comunione de residuo")	3 groups: - the separate assets of each spouse (privévermogen), and - jointly owned assets (gemeenschapsvermogen)	4 groups: - the separate assets of each spouse; - the after-acquired property of each spouse.	Marriage has no bearing on the ownership of property
Acts of administration	- Separate assets: individual management (spouse concerned) - Jointly owned assets: concurrent management (either of them)	- Separate assets: individual management (spouse concerned) - Jointly owned assets: concurrent management (either of them)	Each spouse enjoys and manages their property alone	- Separate assets: individual management; - Jointly owned assets: concurrent management (either of them)	- Separate assets: individual management (spouse concerned) - Jointly owned assets: concurrent management (either of them) - "Comunione de residuo" assets: individual management (spouse concerned)	- Separate assets: individually; - Jointly owned assets: * Principle: concurrent management (either of them) * <small>Except for assets registered in the name of one of the spouses alone or received through succession or gift: individual management (spouse concerned)</small>	Each spouse manages their property	Each spouse manages their property (just like any owner, whether married or not)
Acts of disposal	- Separate assets: individually (spouse concerned) - Jointly owned assets: jointly	- Separate assets: individually (spouse concerned) - Jointly owned assets: jointly	Each spouse has free disposal over their property	- Separate assets: individually (except if the family home is a separate asset (see below)) - Jointly owned assets: jointly unless: (1) Furniture: concurrent management, (2) Assets required for separate performance of one spouse's profession: individual management	- Separate assets: individually (spouse concerned) - Jointly owned assets: jointly - "Comunione de residuo" assets: individually (spouse concerned)	- Separate assets: individually; - Jointly owned assets: jointly but for assets registered in the name of one of the spouses alone or property received through succession or gift: individually (spouse concerned)	Generally speaking, each spouse disposes of their property	Each spouse disposes of their property (just like any owner, whether married or not)
Is the family home specifically protected, including where it is a separate asset and irrespective of the matrimonial regime?	Yes: spouses cannot separately dispose of the rights over the family home or the furniture contained therein. If the spouse whose consent is required refuses to give consent without serious reason, the other spouse may seek authorisation from the family court to carry out the act individually.	Yes: acts of disposal (with or without valuable consideration) over the family home or common-use furniture contained therein can be cancelled within a period of 4 years. These will be null and void where the missing consent is that of the spouse who owns the property. In the case of jointly owned assets and acts of disposal without valuable consideration, the act will be incurably void.	Yes: acts of disposal over the habitual residence carried out without the other spouse's consent or authorisation are voidable at that person's request (if living in the same home) within a period of four years of the date on which they learn of the act of disposal or as from the registration of the act in the land register.	Yes, under Article 215(3) of the French CC: Spouses cannot separately dispose of the rights over the family home or the furniture contained therein. The family home means the family's main residence.	No	Yes: An act of disposal over the family home carried out without the other spouse's consent or authorisation is voidable, at that person's request, if living in the same home.	Yes: under Article 169 of the Swiss CC, which implies that even if a spouse is the sole owner of the "family home", the other spouse's formal consent is required for disposal of this property.	No
Rules on the division of property upon dissolution								
What are the main rules/stages governing the division of property upon dissolution of the matrimonial property regime?	1) Identification of the community's assets and liabilities 2) Reimbursements between the spouses' jointly owned and separate assets 3) Settlement of liabilities	1) Creation of the inventory, and identification of the community's assets and liabilities 2) Discharge of liabilities 3) Determination of the jointly owned assets to be divided, after calculation of reimbursements 4) Equal division of jointly owned assets	Given this is a separation of property regime, each spouse retains their separate assets. If assets have been transferred from one spouse to another, the value to be considered in calculating the reimbursements owed is the value of the assets on the date the regime is extinguished.	1) Recovery of separate assets by each of the spouses 2) Reimbursements owed to the community by one of the spouses, and/or reimbursements owed by the community to one of the spouses 3) Determination of the jointly owned assets * community assets * community liabilities 4) Net community assets	Article 194 CC provides that the community property is divided by distributing the assets and liabilities in equal shares. Article 192 CC provides for reimbursements and returns. It is presumed that chattels are jointly owned assets, but each spouse can provide evidence that they are separate assets.	At the time of dissolution, each spouse can demand the division of such assets. In the event of dissolution, put simply, each spouse retains or recovers their own assets and is entitled (1) to half of the after-acquired property and (2) to half of the spouse's after-acquired property.	In the event of dissolution, put simply, each spouse retains or recovers their own assets and is entitled (1) to half of the after-acquired property and (2) to half of the spouse's after-acquired property.	N/A
Other		Each spouse is entitled to request the inclusion as part of his assets, on a preferential basis and up to the full amount thereof: 1) Property of personal use (not included as separate assets). 2) The economic undertaking that he effectively manages; 3) The premises where he has been conducting his profession. 4) In the event of the other spouse's death, the dwelling where he had his habitual residence.		Primary regime: these are public policy rules applicable to all married couples, regardless of their matrimonial regime, in particular: - Protection of the family home, - Contribution by the spouses to the costs of married life according to their respective capacity. Family interest: The change in matrimonial regime must be in the family's interest (not simply of the two spouses).		It is not possible to dispose individually of one's share in a specific asset, but it is possible to dispose individually of one's share in the whole of the jointly owned assets		Marriage has no bearing on the ownership of property