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Matrimonial property regimes



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(in civil and commercial matters)

1 Is there a statutory matrimonial property regime in this Member State? What does it provide?

The Finnish matrimonial property regime is based on the notion of deferred community of property. This means that during marriage, property is owned separately, but if the marriage is dissolved, property is divided equally between the spouses.

Entering into marriage does not change the ownership of property of the spouses. According to the Finnish Marriage Act (*Avoliittolaki* 234/1929), property that belongs to a spouse before getting married will remain the property of that spouse during the marriage. Any property they acquire or receive as an inheritance or gift during the marriage also remains their property. In addition to property, debts are also separate, meaning that each spouse will alone be liable for any debt they have incurred before or during the marriage. However, both spouses will be jointly liable for a debt incurred by a spouse for the maintenance of the family.

Under the Finnish matrimonial property regime, each spouse has a marital right to the property of the other spouse. This right entitles each of the spouses, or the widow(er) and the heirs of the deceased spouse, to half of the net property of the spouses when the matrimonial property is divided upon the dissolution of the marriage. The marital right covers all property regardless of when and how the spouses acquired or received the property before the marriage. However, spouses may opt not to apply the marital right in their marriage by making a matrimonial property agreement. In addition, any property received by a spouse under a deed of gift, a will or a beneficiary clause stipulating that the recipient's future spouse shall have no marital right to the property in question is also excluded from the scope of the marital right.

2 How can spouses arrange their matrimonial property regime? What are the formal requirements in this case?

The spouses can, either before entering into the marriage or during the marriage, conclude a matrimonial property agreement. A matrimonial property agreement affects how the matrimonial property is divided. For example, the spouses can agree that a spouse has no marital right to any property belonging to the other spouse, but each spouse keeps their own property. The spouses can also agree that certain property is excluded from the division of the matrimonial property.

The matrimonial property agreement must be concluded in writing and be dated and signed. In addition, two disinterested persons must attest it. The matrimonial property agreement enters into force when it has been registered by the local register office [*maistraatti*] (or by the Digital and Population Data Services Agency [*Digi- ja väestötietovirasto*] from the start of 2020).

3 Are there restrictions on the freedom to arrange a matrimonial property regime?

The Marriage Act contains certain restrictions concerning the administration of assets such as the spouses' common home or movable household property. A spouse may not, without the written consent of the other spouse, dispose of immovable property intended to be used as the common home of the spouses. Without the consent of the other spouse, a spouse may not dispose of a leasehold or other rights entitling possession of an apartment intended to be used as the common home of the spouses; movable property which forms part of the common household goods used by both spouses; any necessary tools used by the other spouse; or movable property which is meant for the personal use of the other spouse or the children.

The division of matrimonial property may be adjusted if the division would otherwise lead to an unreasonable result or to the other spouse receiving an unjust financial benefit. This means that in an individual case, on the basis of reasonable consideration, the rules otherwise applicable to the division of matrimonial property may be derogated from. When considering the adjustment of the division of matrimonial assets, special attention must be paid to the duration of the marriage, the activities of the spouses for their common household and for the accumulation and preservation of the property, as well as to other comparable facts regarding the finances of the spouses.

When adjusting the division of matrimonial property, it may be ordered that a spouse is not, under the marital right, to receive any property of the other spouse or that the said right shall be restricted; that certain property shall totally or partly be excluded from the marital right in the division of matrimonial property; or that all or part of property which has been excluded from the marital right of the other spouse by way of a marriage settlement, shall, in the division, be considered totally or partly property subject to the marital right of the other spouse.

4 What are the legal effects of divorce, separation or annulment on the matrimonial property?

When proceedings relating to divorce are pending or when the marriage has been dissolved, a division of matrimonial property must be carried out if a spouse or an heir of the deceased spouse so demands. In this division of matrimonial property, the marital right is realised by determining the amount the spouse whose net property is greater must hand over to the other spouse. If neither spouse has a marital right to the property of the other spouse, the property of the spouses must be separated rather than divided. If the spouses have joint property, the said property must be divided upon request when the matrimonial property is being divided or the property of the spouses separated.

Furthermore, a division of matrimonial property may also be carried out if a foreign judgment on separation has been issued for spouses whose matrimonial property matters are governed by Finnish law. However, the division cannot be carried out if the spouses resume cohabiting after the judgment on separation.

5 What are the effects of death of one of the spouses on the matrimonial property regime?

In principle, the same rules are followed when the marriage is dissolved because of death of one of the spouses.

If the deceased spouse has left direct heirs (children or their descendants), the widow(er) and the heirs of the deceased can request a division of matrimonial property. In this division of matrimonial property, the main rule is to divide all property equally. Half of the property goes to the surviving spouse and the other half is shared between the heirs. However, if the widow(er) has more property than the deceased spouse, they have the right to keep all of their property.

If a marriage is dissolved due to the death of a spouse but the deceased spouse left no direct heirs, the widow(er) inherits all the assets of the deceased spouse, unless the deceased spouse has ordered otherwise in a will. In such a case, the matrimonial property is not divided between the property of the first deceased spouse and the surviving spouse. The general rule is that it is only after the death of both spouses that the property left by the last remaining spouse must be divided equally between the heirs of both spouses. The widow(er) may not

bequeath what would thus pass to the heirs of the first deceased spouse.

Unless the direct heirs demand the division of the estate or it is required under the terms of a will left by the deceased spouse, the surviving spouse may retain possession of the undivided estate of the deceased spouse. However, the surviving spouse has the right to retain the possession of the common home of the spouses and any common movable household property undivided, provided that the widow(er) does not own another residence suitable as a home.

6 Which authority has the competence to decide in a case relating to a matrimonial property regime?

In Finland, the authorities do not initiate any procedures concerning matrimonial property on their own initiative. If the spouses fail to reach an agreement on the division, the District Court (*käräjäoikeus*) appoints, on application, an executor to carry out the division of matrimonial property.

7 What are the effects of the matrimonial property regime on legal relationships between a spouse and a third party?

As a rule, marriage does not restrict the right of a spouse to conclude agreements, but during marriage each spouse has the right to make decisions concerning their own property without the consent of the other spouse.

In addition, a spouse is not directly liable under law for a debt incurred by the other spouse. However, the spouses are jointly liable for a debt taken by one of the spouses alone for the maintenance of the family, as well as for the payment of the rent for a common apartment of the spouses. The spouses can only terminate a leasehold for their joint apartment together, even when the leasehold was signed by one of the spouses alone.

The rights of creditors are protected in the Marriage Act so that a spouse cannot waive their rights in the division of matrimonial property in a manner binding on the creditors. If, in the division of matrimonial property, a spouse has handed over property to the other spouse or the heirs of the other spouse to a value considerably exceeding what they should have handed over, the division may be reclaimed and paid into a bankruptcy estate.

8 A short description of the procedure for the division, including partition, distribution and liquidation, of matrimonial property in this Member State.

In Finland, the authorities do not initiate any procedures concerning matrimonial property on their own initiative. When proceedings relating to divorce are pending or when the marriage has been dissolved, a division of matrimonial property must be carried out if a spouse or an heir of the deceased spouse so demands. If neither spouse has a marital right to the property of the other spouse, a separation of the property of the spouses must be carried out instead of the division.

In a division of matrimonial property due to divorce, the main rule is to divide all property equally, unless the spouses have concluded a matrimonial property agreement. The division of matrimonial property may also be adjusted if it would otherwise lead to an unreasonable result. The joint property of the spouses must also be divided upon request, in the case of division or separation of property.

When a marriage is dissolved due to the death of a spouse and the deceased spouse has left direct heirs (children or their descendants), the widow(er) and the heirs of the deceased can request a division of matrimonial property. In this division, the main rule is to divide all property equally. Half of the property goes to the surviving spouse and the other half is shared between the heirs. If, on the other hand, the surviving spouse has more property than the deceased spouse, the surviving spouse always has the right to keep all of their own property. If a marriage is dissolved due to the death of a spouse but the deceased spouse left no direct heirs, the surviving spouse inherits all the assets of the deceased spouse, unless the deceased spouse has stipulated otherwise in a will. The general rule is that it is only after the death of both spouses that the property left by the last remaining spouse must be divided equally between the heirs of both spouses.

The parties may carry out the division themselves in accordance with a mutual agreement (division by

agreement). If the parties fail to reach an agreement, the division is carried out by a court-appointed executor upon application by one of the spouses (court-appointed division).

When the division is carried out by agreement, the division must be recorded in a document, which must be dated and signed. In addition, two disinterested persons must attest it. If an executor carries out the division, the division must be drafted in the form of a document, signed by the executor.

The document may be lodged with the local register office (from the start of 2020, the Digital and Population Data Services Agency) for registration. Registration of the division document protects each spouse against recovery claims from the creditors of the other spouse; it does not otherwise affect the validity of the division of assets between the parties.

9 What is the procedure and documents or information typically required for the purpose of registration of immovable property?

Ownership of a property can be registered by applying for registration of title. The registration of title is entered into the public title and mortgage register. Once title to a property has been registered, the new owner is shown on the certificate of title.

If ownership of a property changes because of its division or separation, the original of the agreement to divide or separate the property, an explanation of the reasons for the division of the property (e.g. a notification from the District Court indicating that proceedings relating to divorce have been brought before it), as well as any receipt of payment of transfer tax, must be sent to the National Land Survey of Finland [*Maanmittauslaitos*] for the purposes of applying for registration of title.

The period for registration of title of property divided because of the dissolution of matrimony starts when the division takes effect. The period for registration of title is six months.

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