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Property consequences of registered partnerships

 Germany

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European Judicial Network
(in civil and commercial matters)

1 Are there different forms of "registered partnerships" in this Member State? Explain the differences between the different forms?

Since the law introducing the right of same-sex persons to marry (*Gesetz zur Einführung des Rechts auf Eheschließung für Personen gleichen Geschlechts*) came into force on 1 October 2017, it is no longer possible to enter into registered partnerships in Germany. Same-sex couples can now enter into marriage in the same way as opposite-sex couples. Partnerships already registered can be converted into marriages. However, there is no obligation to do this; existing registered partnerships can continue in the same form as before.

2 Is there a statutory property regime for registered partnerships in this Member State? What does it provide? To which forms of "registered partnership" does it apply?

Under the Law on Registered Partnerships ([Gesetz über die Eingetragene Lebenspartnerschaft](#)), same-sex couples were able to enter into registered partnerships in Germany from August 2001 to September 2017 inclusive. The legal consequences of a registered partnership were (and still are) largely modelled on the legal consequences of marriage.

3 How can partners arrange their property regime? What are the formal requirements in this case?

Registered partners are subject to the property regime of community of accrued gains (*Zugewinnngemeinschaft*) unless they agree otherwise by means of a notarial registered partnership contract. The provisions on the statutory property regime for marriages apply *mutatis mutandis* to registered partnerships (Section 6 of the Law on Registered Partnerships). A different property regime (separation of property - *Gütertrennung*, community of property - *Gütergemeinschaft*, or the optional Franco-German community of accrued gains - *deutsch-französische Wahl-Zugewinnngemeinschaft*) may be established by means of the registered partnership contract (Section 7 of the Law on Registered Partnerships).

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

The information concerning property regimes for marriages applies *mutatis mutandis* to registered partnerships.

5 What are the legal effects of dissolution or annulment on the property consequences of the registered partnership?

The effects of the dissolution or annulment of registered partnerships are modelled on the effects of separation and divorce of marriages, so that in principle one can refer to the information concerning marriages. The effects differ depending on the property regime selected. For the legal property regime of community of accrued gains, when the property regime ends (for example because of the death of a registered partner, dissolution of the registered partnership, or through contractually agreeing upon a different property regime), equalisation of accrued gains takes place. Equalisation of accrued gains means that the partner who accrued more assets than the other partner during the registered partnership must compensate the other partner for half of the difference between their own accrued assets and the assets accrued by the other partner, in the form of a monetary payment.

For the property regime of community of property, in the event of dissolution (where appropriate, once the obligations have been discharged), the community property is divided. In principle, each of the partners is entitled to half of the remaining surplus. If, however, the registered partners agreed on separation of property, their assets are completely separate and so there is no equalisation of assets after the end of the property regime.

6 What are the effects of death on the property consequences of the registered partnership?

The statutory right of inheritance of a registered partner is equivalent to that of a spouse (Section 10 of the Law on Registered Partnerships).

7 Which authority has the competence to decide in a case relating to the property consequences of the registered partnership?

A Family Court (Familiengericht) has the jurisdiction to hear cases concerning the property consequences of registered partnerships. Such cases constitute registered partnership matters (Section 269(1)(10) of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*)). In accordance with Section 270(1), second sentence, in conjunction with Sections 111(9) and 112(2) of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction, the provisions on property regime matters apply *mutatis mutandis*. The procedure corresponds to that applicable in marriage matters (for example divorce and matters related to divorce) or in matters concerning family disputes.

8 What are the effects of the property consequences of the registered partnership on legal relationships between a partner and a third party?

A person in a registered partnership is typically liable only for their own debts and only with their own assets, which is also the case under matrimonial property law. This excludes transactions for the reasonable coverage of the family's everyday needs (Section 8(2) of the Law on Registered Partnerships in conjunction with Section 1357 of the Civil Code (*Bürgerliches Gesetzbuch*)). The remarks concerning possible restrictions on the right of disposal apply *mutatis mutandis*.

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

The family home and household goods can be divided temporarily for the duration of the separation (Sections 13 and 14 of the Law on Registered Partnerships) or permanently after dissolution of the registered partnership (Section 17 of the Law on Registered Partnerships in conjunction with Sections 1568a and 1568b of the Civil Code).

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

The general principles on the statutory property regime for marriages apply *mutatis mutandis*. Where the registered partners live under the property regime of community of accrued gains, their separate assets do not become community property. There is therefore no need to rectify the land register (*Grundbuch*). This also applies to real estate purchases during the registered partnership. Registered partners may purchase property in their preferred legal form (for example, community of part-owners (*Bruchteilsgemeinschaft*) or community of joint owners (*Gesamthandsgemeinschaft*)). The same principles apply to the property regime of separation of property. It is only where the partners choose community of property as their property regime that they must submit the notarial registered partnership contract to the land registry office (*Grundbuchamt*) and apply for rectification of the land register.

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