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Property consequences of registered partnerships

 Belgium

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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?

Belgium has only one form of registered partnership, namely '*wettelijke samenwoning*' (legal cohabitation). In legal cohabitation, each of the partners retains the assets for which he/she can prove ownership. There is also joint property, i.e. assets in respect of which neither partner can prove ownership (Article 1478, first and second paragraphs, of the old Civil Code).

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?

When two persons living together make a declaration of legal cohabitation before the civil registrar of their municipality, they become registered partners. A declaration of legal cohabitation is made in writing to the civil registrar of their common place of residence, who acknowledges receipt thereof. In order to make such a declaration, the partners must be of age and have legal capacity. They must not already be married or have already made a declaration of legal cohabitation (Article 1475 of the old Civil Code).

Legal cohabitation creates a number of rights and obligations which cannot be altered by mutual agreement. Firstly, the family home and the household effects there are protected: the owner of the family dwelling may not sell them or encumber them with a mortgage without the consent of the other partner. Secondly, both partners are required to contribute to the costs of living together in proportion to the size of their respective income. Finally, both partners are jointly and severally liable for any debts they incur while living together or in connection with the bringing up children living in the family home.

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

Legally cohabiting persons can organise their partnership by means of an agreement known as a *samenlevingsovereenkomst* (cohabitation agreement). In accordance with Article 1478(4) of the old Civil Code, such agreements must be drawn up by notarial act.

In principle, legal cohabitants each retain their own assets. These assets remain separate from each other. Thus each partner retains those assets he/she owns at the start of the cohabitation and those whose ownership he/she can prove. In addition, each partner also retains any income from the above-mentioned assets and any income from work or income replacement.

All other assets are considered to belong to both partners, by virtue of the legal presumption of indivisibility. Each partner is deemed to own an equal share of those undivided assets, unless otherwise agreed and duly demonstrated.

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

Legally cohabiting partners do not have unlimited freedom to regulate their property regime. They may not depart from the rules on the protection of the family home and the rules on proportionate contributions to the expenses of living together. However, by means of a cohabitation agreement they may to a limited extent extend their rights with respect to each other. Such agreement may not restrict the partners' individual freedom, and the partners must observe the rules on parental responsibility. Nor can partners regulate inheritance rights by means of a partnership agreement. If they want to grant each other (greater) inheritance rights they can, for example, draw up a will.

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

Legal cohabitation may be terminated by a written declaration submitted with the mutual consent of the legal cohabitants or unilaterally by one of them to the civil registrar of the municipality in which both parties live or one of them lives. In addition, it is terminated when one of the two partners dies, or when the partners marry each other.

In principle, each partner retains his or her own assets. Each partner retains those assets he/she owns at the start of the cohabitation and those whose ownership he/she can prove. If there are creditors, an invoice as proof of ownership may protect the property of the partner who is not a debtor from any seizure. Each partner retains his/her income from work or replacement income, and anything else is considered to belong indivisibly to both. Each partner is deemed to own an equal share of those undivided assets, unless otherwise agreed and duly demonstrated.

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

If one of the registered partners dies, the surviving partner receives the usufruct of the property which serves as the main family dwelling, including the household effects (Article 4.23 of the Civil Code). This is not the case for a non-registered partnership.

This form of inheritance right is not a protected 'reserved' inheritance right as in the case of married couples. This means that the surviving partner cannot claim a minimum share if his or her inheritance rights are affected by certain donations or legacies. In addition, a partner may cancel that inheritance by terminating the legal cohabitation.

Partners who wish to grant each other more than the usufruct of the family home and household effects may make a will. Cohabiting couples who purchase a dwelling may also add an accretion clause to their sales contract. That clause will ensure that the longer-lived partner is able to acquire full ownership of the dwelling.

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

The family court has jurisdiction in matters relating to the implications of registered partnerships (legal cohabitation) as regards property rights.

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

The other partner is also jointly and severally liable for any debt incurred by one of the registered partners in

connection with the cohabitation and any children raised by them (Article 1477(4) of the old Civil Code). This is not the case for a non-registered partnership.

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

In principle, each partner retains his or her own assets.

Any undivided assets may be liquidated and distributed by common consent. If the legal cohabitants cannot reach agreement, the notary liquidator previously appointed by the family court drafts a report which the parties may approve. If they do not approve it, they should submit a formal objection. The family court may then issue a judgment approving the draft report on the division of assets and reject the objections or decide that the objections are well founded (in whole or in part).

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

These are required to be transcribed by means of a notarial act in the register kept by the competent office of the General Administration of Patrimonial Documentation (*Algemene Administratie van de Patrimoniumdocumentatie*) is required.

■ Last update: 03/10/2025

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