

## Avalent>Perekonnaasjad ja pärimine>Abielu ja registreeritud kooselu varalised tagajärjed>Abikaasade varasuhe Matrimonial property regimes

Itaalia

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

The matrimonial property regime in Italy is the statutory community of property, as provided for in Articles 177 *et seq.* of the Civil Code.

The statutory community of property establishes that purchases made by the spouses either jointly or separately during the marriage, with the exception of purchases relating to personal property, fall under the community regime.

The following are considered to be a spouse's personal property:

- 1) property that already belonged to the spouses before the date of marriage;
- 2) property received as a gift or inheritance after the date of marriage;
- 3) property for strictly personal use by each spouse;
- 4) property needed by a spouse for carrying out his/her profession;
- 5) property received as compensation for damages, as well as any pension related to a partial or total loss of the ability to work;
- 6) property acquired with the price of the transfer or exchange of personal property, provided that this is explicitly stated at the time of acquisition.

The following assets also fall under the community of property regime:

- 1) the profits earned by each spouse, received and not spent at the time the community is dissolved;
- 2) the proceeds from the separate activities of each spouse, if not spent at the time the community is dissolved;
- 3) any businesses managed jointly by the spouses and established after the date of marriage.

The administration of community property and representation in legal proceedings in respect of acts regarding community property are the responsibility of both spouses separately, whereas they are jointly responsible for acts of extraordinary administration.

Property falling under the statutory community regime is divided by splitting assets and liabilities into equal shares.

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

The spouses may enter into a different agreement, which must take the form of a public deed in order to be valid.

If the separation of property regime is chosen, this decision may also be declared in the record of marriage.

The spouses may agree to set up a capital fund by allocating certain movable or immovable assets entered in public registers or credit instruments in order to meet the needs of their family (Article 167 of the Civil Code).

The fund may be set up by just one spouse or both spouses by way of a public deed. The fund may also be set up by a third party by way of a public deed or last will and testament.

The ownership and administration of the fund are subject to the rules on the statutory community of property regime (Article 168 of the Civil Code).

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

The spouses may not decide in a general manner that their property relationships should be governed, in whole or in part, by laws to which they are not subject or by customs, but must specifically declare the content of the agreements intended to govern these relationships (Article 161 of the Civil Code).

Any agreement designed to create a dowry is invalid, in any event (Article 166-*bis* of the Civil Code).

If the spouses choose to amend the statutory community of property regime by agreement, the following may not be included under that regime:

- 1) property for strictly personal use;
- 2) property needed by a spouse for carrying out his/her profession;
- 3) property received as compensation for damages;
- 4) any pension related to a partial or total loss of the ability to work.

In addition, there may be no exceptions to the rules on the statutory community regime as regards the administration of property and the equality of shares.

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

Divorce, separation or annulment of the marriage will result in dissolution of the statutory community.

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

Death will result in dissolution of the community of property.

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

The judicial authority has jurisdiction in accordance with the general rules.

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

The obligations incurred by one of the spouses before the date of marriage do not apply to property falling under the statutory community regime, nor do the obligations associated with gifts and inheritances received by the spouses during the marriage that do not fall under the community regime (Articles 187 and 188 of the Civil Code).

The obligations incurred by one of the spouses after the date of marriage in relation to the performance of acts falling outside the ordinary course of business without the necessary consent from the other spouse, in the event that amounts due to creditors cannot be settled using personal property, apply to property falling under the statutory community regime (Article 189 of the Civil Code).

Where the amounts due cannot be settled using community property, creditors may alternatively take action in relation to the personal property of each spouse, up to the amount of half of the claim (Article 190 of the Civil Code).

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

Property falling under the statutory community regime is divided by splitting assets and liabilities into equal shares. In consideration of the needs and custody of any dependants, the court that carries out this division may grant one spouse a right of usufruct over some of the property belonging to the other spouse (Article 194 of the Civil Code).

During the division, the spouses are entitled to collect any movable property that belonged to each of them prior to the date of community or that was received during the community period as an inheritance or gift.

If the movable property to be collected cannot be found, the spouses may request a sum equivalent to the value of that property by providing proof of its value, including by way of reputation, unless such property is missing because it has been used or lost or for any other reason that cannot be attributed to the other spouse (Article 196 of the Civil Code).

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

All contracts transferring ownership of immovable property and, more generally, all deeds establishing, transferring or modifying immovable property rights must be entered in the relevant Land Register. Purchases of immovable property falling under the statutory community regime are not exempt from this rule. Any person requesting a transcript must notify the Land Registry Office, in duplicate, of the property regime of the parties – if married – according to the declaration made in the deed or certificate of the civil registrar who entered the property regime in the margin of the marriage certificate, and must also provide a copy of the title.

Other marriage agreements, by means of which, for example, specific items of personal immovable property belonging to one spouse are made subject to a community regime or a capital fund for immovable property is established, are also subject to entry in the Land Register.

Last update: 21/12/2023

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