



SWISS MARITAL LAW

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1 How to get married



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1.1 International relationships

If one person from the prospective spouses has Swiss citizenship or place of residence in Switzerland, the Swiss authorities are competent for the marriage. Foreign prospective spouses who are not resident in Switzerland may also be authorized by the competent authority to marry there, provided such a marriage is recognized in the state of their residence or in their state of citizenship.

If the Swiss authorities are competent for the marriage, the regulations of Swiss Law are applicable. It should additionally be noted that a valid marriage concluded abroad is recognised in Switzerland.

1.2 Wedding in Switzerland

There is a preparatory procedure before the actual wedding. The preparatory procedure is carried out at the civil register office at the domicile of the bride or groom at their request. The bride and groom must provide documentary proof of identity and personally declare at the civil register office that they satisfy the legal requirements for marriage; in addition, they must also produce any necessary consent. Engaged couples who are not Swiss citizens must prove during the preparatory procedure that they are lawfully resident in Switzerland.

The civil register office verifies that the request has been duly submitted, the identity of the engaged couple has been established, the requirements for marriage are satisfied, and in particular whether there are any circumstances that suggest that the request clearly does not reflect the free will of the engaged couple. Provided these requirements are fulfilled, the civil register office informs the betrothed parties that the preparatory procedure has been completed and of the legally prescribed time limits for marriage. The wedding ceremony may take place no earlier than ten days and no later than three months following notification of completion of the preparatory procedure.

As for the wedding, the engaged couple can get married at the wedding location of the civil registry district of its choice. Two adult and judicious witnesses must be present.

2 Effects of the marriage

2.1 International relationships

The Swiss courts or authorities at the place of residence or, in its absence, those at the usual residence of one of the spouses are competent for suits or measures regarding the marital rights and obligations.

If the spouses have their place of residence in Switzerland, the marital rights and obligations are subject to Swiss law. If both spouses do not have their place of residence in Switzerland, the marital rights and obligations are subject to the law of the country of residence to which the couple's circumstances are closely related.

2.2 Marital union

If the spouses are married, they form a marital union. This obligates them to protect the well-being of the union in peaceful interaction and to take care of the children together. They also owe each other loyalty and support.

2.3 Maintenance of the family

For the due maintenance of the family, both spouses are jointly responsible according to their own abilities. The respective contribution can be made through monetary payments, by attending to the household, by taking care of the children or by cooperating in the profession or business of the other. The spouse who attends to the household, takes care of the children or helps the other in the profession or business, is entitled to a regular and reasonable amount of money at his/her free disposal.

2.4 Duty of disclosure

The spouses are mutually entitled to provision of information about income, assets and liabilities.

2.5 Protection of the marital union

One spouse alone or both together can appeal to the court and request mediation if one of the spouses does not fulfill his/her duties towards the family or if the spouses cannot come to an agreement in an important matter. If necessary, the court can refer the married couple to a marriage or family counselling centre.

Upon request of a spouse, the court can define the monetary contributions to the family maintenance. If cohabitation is no longer reasonable due to the fact that it endangers the personal or financial security of one of the spouses or the well-being of the family, a spouse is authorised to suspend the joint household for a certain period. In this case, the court determines the monetary contributions that one spouse owes to the other, regulates the use of the residence and of the household goods and, if necessary, orders the separation of property. If the couple has minor children, it takes the necessary measures in that regard as well.

3 Divorce and separation



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3.1 International relationships

For lawsuits for a divorce or separation, the Swiss courts at the place of residence of the defendant or at the place of residence of the plaintiff, if he/she has been residing in Switzerland for one year or if he/she is a Swiss national, are competent. As of January 1st, 2017, divorce and separation before Swiss courts are always subject to the Swiss Law.

Swiss courts with jurisdiction over an action for divorce or separation also have jurisdiction to rule on the secondary effects thereof. Since January 1st, 2017, Swiss law always governs the secondary effects of divorce or separation as well.

3.2 Post-marital maintenance

After a divorce, as a basic rule, every spouse should pay for his/her own due maintenance. However, on an exceptional basis it can be justified, based on the principle of post-marital solidarity, that one spouse pays post-marital maintenance to the other. Whether post-marital

maintenance is owed by one spouse to the other depends on the concrete circumstances of the individual case.

For determining the due maintenance, one must start with examination of the marriage as it has been experienced so far. The Swiss Civil Code stipulates that depending on the selected "*division of duties during the marriage*" and the "*duration of the marriage*", there is "*entitlement to continuation of the standard of living during the marriage*". According to the jurisprudence of the Federal Supreme Court (Federal Supreme Court, judgment of 12 April 2006, 5C.308/2005, E. 2.2.), marriage should not "be compared with a contract that can be terminated any time, after the dissolution of which the spouses should only be considered as if the marriage never existed. A long-lasting marriage with many children or a so-called *life-defining marriage* for other reasons can create trust, which should not be breached after the divorce and gives a basic entitlement to continue the standard of life last experienced during the marriage".

When post-marital maintenance is awarded by the court, the spouse entitled to maintenance usually receives a pension. In exceptional cases, the court can stipulate a one-time lump-sum payment instead of a pension.

3.3 Prerequisites for post-marital maintenance

If a spouse cannot pay for his/her maintenance, including appropriate retirement provision, the other spouse must pay him/her a reasonable contribution, however only if he/she is capable to pay this contribution.

Whether a contribution must be paid and, if yes, in which amount, depends on different criteria, particularly:

- the division of duties during the marriage;
- the duration of the marriage;
- the standard of living during the marriage;
- the age and health of the spouses;
- the income and assets of the spouses;
- the extent and duration of child care still required of the spouses;
- the vocational training and career prospects of the spouses and the likely cost of reintegration into working life;
- expectancy of federal old age and survivor's insurance benefits and of occupational or other private or state pensions, including the expected proceeds of any division of withdrawal benefits.

Exceptionally, a maintenance contribution may be denied or reduced if it would clearly be inequitable, particularly because the spouse otherwise entitled to receive such contribution:

- has grossly violated his or her duty to contribute to the maintenance of the family;
- has wilfully brought about his or her own indigence;

- has committed a serious criminal offence against the other spouse or a person close to him or her.

4 Matrimonial property regime

4.1 Introduction

The matrimonial property regime regulates the financial aspects of a marriage. It also determines which assets belong to whom during and in case of dissolution of the marriage and how possible capital gains should be divided between the spouses and their assets. It also governs how they should pay off their mutual debts and how the collateral objects available at the time of dissolution of the marriage should be allocated.

4.2 International relationships

For suits and measures regarding the matrimonial property circumstances of the couple, the following are generally competent:

- for matrimonial property disputes in case of death of a spouse, the Swiss courts or authorities, which are competent for inheritance law disputes;
- for matrimonial property disputes in case of legal dissolution of the marriage or divorce, the Swiss courts that are competent for this;
- in the remaining cases, the Swiss courts or authorities, which are competent for lawsuits or measures regarding the effects of a marriage.

Marital property relations are governed by the law chosen by the spouses. The spouses may choose the law of the state in which they are both resident or will be resident after the wedding, or the law of one of their home countries. A choice of law must be agreed in writing or result with certainty from the provisions of a marriage contract; furthermore, such choice is governed by the chosen law.

A choice of law may be made or amended at any time. Unless otherwise agreed, a choice of law made after the wedding has retroactive effect going back to the date of the marriage. The chosen law remains applicable as long as the spouses have not amended or revoked such choice.

If the couple has not chosen a law, the law of that country is applicable, where both spouses have their place of residence, or, if there is no common place of residence, the law of the country of their last common place of residence.

4.3 Ordinary matrimonial property regime of the participation in acquired property

4.3.1 Overview

According to the Swiss law, the so-called *participation in acquired property* is the ordinary matrimonial property regime. This regime of the participation in acquired property is always applicable as long as the spouses have not agreed upon either the communal property or separate property regime through a marriage contract, and as long as an extraordinary matrimonial property regime has not arisen.

In case of the matrimonial property regime of the participation in acquired property, there are *four categories of assets*, namely the *acquired property* as well as the *individual property of each spouse*. During the marriage, each spouse can use and manage his/her own acquired and individual property himself/herself and, in principle, even dispose of it at will. The distinction between the different collections of assets is therefore primarily relevant in case of matrimonial property disputes.

4.3.2 Acquired property

Acquired property is comprised of those assets which a spouse has acquired for *valuable consideration* during the marital property regime. In particular, the acquired property of a spouse includes:

- the proceeds from his or her employment;
- benefits received from staff welfare schemes, social security and social welfare institutions;
- compensation for inability to work;
- income derived from his or her own property;
- property acquired to replace acquired property.

Acquired property also includes amounts within the scope of the matrimonial maintenance, amounts at the free disposal of the spouse, who attends to the household, takes care of the children or helps the other spouse in the profession or business, remunerations to a spouse for extraordinary cooperation in the profession or business of the other as well as compensations, which are due if one spouse has contributed considerably more to the family maintenance from his/her income or assets than he/she was obligated to, and finally, maintenance payments from third parties.

In general, all assets that are not individual property according to the law are included in the acquired property.

4.3.3 Individual property

By operation of law, a spouse's individual property is comprised of:

- personal effects used exclusively by that spouse;
- assets belonging to one spouse at the beginning of the marital property regime or acquired later at no cost by inheritance or otherwise;
- claims for satisfaction;
- acquisitions that replace individual property.

Under a marriage contract, spouses may declare acquired property to be individual property *set aside for professional or business use*. This aims at ruling out the share in the surplus of the capital invested in business. Present as well as future acquired property can be declared as individual property. In any case, it is necessary that this deals with assets that are suitable for the exercise of a profession or for the operation of a business. Even entire companies can be assigned to the individual property category. It is, however, always necessary that this deals with capital for the economic activity of a spouse and not with such that serves for pure asset management. This regulation does *not apply to the own remuneration of the economically active spouse*, which must remain in the acquired property.

Furthermore, spouses may stipulate in a marriage contract that *income from individual property does not qualify as acquired property*. This arrangement option is open for all incomes from assets, but can also be stipulated only for a part thereof, for example for incomes of a certain period of time, for certain things or assets or with a restriction for the total. In case of an entrepreneurial activity: the corporate earnings can be declared as individual property, but *not the income, which qualifies as an appropriate remuneration for the entrepreneurial activity*.

4.3.4 Matrimonial property disputes

4.3.4.1 General information

Multiple steps are required for the execution of matrimonial property disputes. Firstly, the assets of the couple should be separated. The surplus should then be calculated including possible added value shares and the share of every spouse should be determined. The thus resulting receivables of the spouses are then settled mutually. Finally, one spouse should fulfil the remaining claim of the other. This will be due with the completion of the matrimonial property dispute and should be settled immediately.

4.3.4.2 Return of assets and repayment of mutual debts

If one spouse possesses assets of the other at the time of the matrimonial property dispute, for example in a divorce case, he/she must return these. If an asset is in joint ownership of the

spouses, the court can, upon corresponding application of a spouse, assign the spouse sole ownership of the corresponding asset, as long as he/she shows predominant interest in it and pays full compensation to the other spouse. Every spouse must also settle the debts, which he/she owes to the other spouse; namely, not only those of a matrimonial character, but also those from loans granted.

4.3.4.3 Added value share

Every spouse who has contributed to the purchase, improvement or maintenance of assets of the other, without receiving a consideration for that, is entitled to a share of the added value within the scope of his/her contribution if there is an added value for the corresponding asset at the time of the matrimonial property dispute. The added value is calculated according to the current value of the assets. Contribution of one spouse can thus result in a share of the value of the assets of the other spouse if certain prerequisites are met. Such contributions can be made either as a payment in kind or as work performance or in cash, but must however reach a certain level so that they are actually considered in case of a possible added value.

The couple can rule out or correct possible added values through a written agreement.



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4.3.4.4 Addition, compensation claim and calculation of surplus

Addition

Once the spouses have repaid their mutual debts and possible added value shares are determined, the so-called surplus must be calculated in the next step. In order to be able to calculate this, acquired property as well as individual property of every spouse must first be segregated.

The following are added to the property acquired during marriage:

- the value of dispositions made without consideration by one spouse without the other's consent during the five years preceding the dissolution of the marital property regime, save for the usual occasional gifts;
- the value of assets disposed of by one spouse during the marital property regime with the intention of diminishing the other's share.

Compensation claims

If a spouse has paid debts of the acquired property with funds from the individual property and, vice versa, debts of the individual property with funds from the acquired property, one category of assets has a compensation claim against the other. There is also a compensation claim if funds from one category of assets have contributed to the purchase, improvement or maintenance of assets of the other category; if there is an added value or a reduced value, the compensation claim corresponds to the share of the contribution and is calculated according to the value of the assets at the time of the dispute or of the sale.

Calculation of surplus

From the thus calculated value of the acquired property, the debts charged on it are deducted. What remains after this is the surplus; a setback is not considered.

4.3.4.5 Division of surplus

According to optional statutory provisions, every spouse is entitled to half of the surplus of the other. The spouses however have the option of *agreeing upon a different share of the surplus* through a marriage contract. Such agreements should not affect the legal share claims of non-common children and their descendants. Agreements on the change of the legal share of the surplus are applicable in case of divorce, separation, revocation of the marriage or court order for separation of property *only if the marriage contract stipulates this explicitly*.

4.4 Matrimonial property regime of community of property

4.4.1 General information

If the spouses do not want to be subject to the matrimonial property regime of the participation in acquired property, they can establish the matrimonial communal property regime through a marriage contract. Unlike the participation in acquired property and the separation of property, in the communal property regime a part of the assets is assigned to the spouses in joint ownership.

Communal property includes three categories of assets: the community property and the individual property of each spouse. The community property belongs undivided to both spouses, which is why none of the spouses can dispose of his/her share of the community property.

During the marriage, both spouses are responsible for the management of the community property. Every spouse can, within the scope of the ordinary management, obligate the community and have the community property at his/her disposal. For the rest, each spouse manages his/her individual property himself/herself and disposes of it.

4.4.2 Community property

The law does not give a fixed description of the community property; this should be determined by the spouses in the marriage contract. In the marriage contract, the spouses can choose between the general community of property, the participation in acquired property and "other joint properties".

In case of general communal property, the assets and the income of the spouses belong to the community property. This does not include objects that are individual property by law.

In case of the participation in acquired property, the community property is limited to the acquisition.

Finally, in the case of other joint properties, spouses can exclude from community property certain assets or types of assets in the marriage contract, such as land or earned income of a spouse or assets, with which the spouse exercises a profession or operates a business. Unless otherwise agreed upon, the income from these assets is also not included in the community property.

4.4.3 Individual property

By law, the individual property of every spouse includes objects that serve him/her exclusively for personal use, as well as claims for compensation for pain and suffering. Even replacements for individual property again become individual property.

4.4.4 Dissolution of the matrimonial property regime and dispute

In case of matrimonial property disputes, the properties of the spouses and the community property must first be separated. As with participation in acquired property, the time of dissolution of the matrimonial property regime is decisive for the composition of these categories of assets.

Also similar to the matrimonial property regime of the participation in acquired property, there can be compensation claims here as well between the different categories of assets. If a spouse has paid debts of the community property with funds from the individual property and, vice versa, debts of the individual property with funds from the community property, one category of assets has a compensation claim against the other. For the rest, possible added value shares of the different categories of assets should be determined here as well. Namely, if the individual property of a spouse or the community property has contributed to the purchase, improvement or maintenance of an asset of another collection of assets and if there is an added value at the time of the matrimonial property dispute, the corresponding collection of assets is entitled to a share of this added value to the extent of its contribution. The added value is calculated according to the current value of the assets.

If the community property is dissolved due to the death of a spouse or through agreement to apply another matrimonial property regime, every spouse or his/her heirs are entitled to half of the community property. A different division can also be agreed upon through a marriage contract. This should not, however, affect the legal share claims of the descendants. In case of dissolution of the community property through divorce, separation, revocation of the marriage or occurrence of legal or judicial separation of property, each spouse withdraws that part from the community property which would be his/her personal property under the participation in acquired property. The remaining community property is divided equally between the spouses. Here too, a division deviating from the legal regulation can be agreed upon through a marriage contract.

4.5 Matrimonial property regime of separation of property

If the spouses opt for the matrimonial property regime of separation of property, they must agree upon this in a marriage contract. Since marriage and dissolution of marriage do not have any effects on the assets of the spouses, separation of property is not an actual matrimonial property regime. In case of separation of property, there are no matrimonial property entitlements, which is why the end of the matrimonial property regime does not result in any matrimonial property disputes.

For the rest, every spouse manages and uses his/her assets himself/herself during the marriage and disposes of it.

5 Arrangement options

5.1 General information

If the spouses get divorced, this has matrimonial property-related as well as divorce-related consequences. The spouses have a certain level of freedom with regard to the matrimonial property dispute as well as the post-marital maintenance. They have the option of making a marriage contract regarding the matrimonial property dispute or a divorce agreement regarding the post-marital maintenance.

Divorce agreements require judicial approval; on the other hand, pure marriage contracts can be made without judicial verification. For this reason, marriage contracts have great practical significance, while divorce agreements are made rather rarely.

5.2 The marriage contract in particular

A marriage contract can be made before or after the marriage. Within the legal parameters, the engaged or married couple can select, annul or change its matrimonial property regime through a marriage contract. If the engaged or married couple wants to make a marriage contract, they must be judicious. If they are minor or under disability, they require approval of their legal representative. In order for the marriage contract to be valid, it must be publicly authenticated and be signed by the contracting persons as well as, if necessary, by the legal representative.

WHO IS FRORIEP?

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