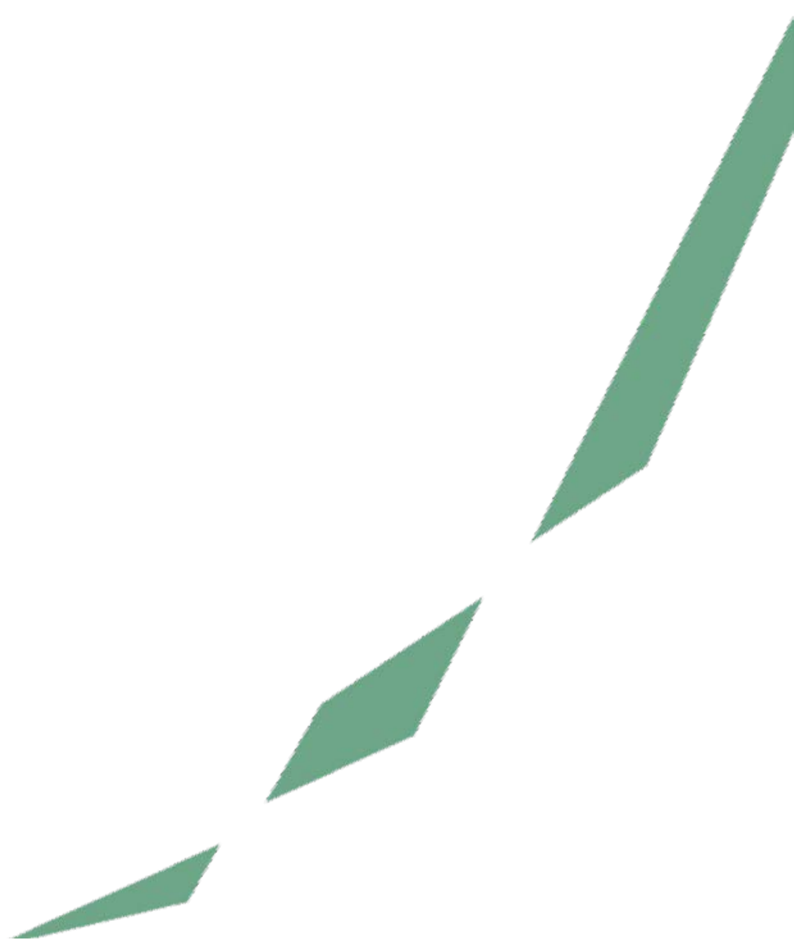
Marital law



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Preface

The purpose of this brochure is to present a simple overview of the outline of marital law. Jusshjelpa i Nord-Norge has experienced a large amount of marital law cases, especially within the subject of divorce. We hope this brochure will contribute to clarification and awareness of the regulations that matter throughout the marriage itself, and in divorce.

Marital law include the rules of contracting marriage, the property relations and the consequenses of divorce. The main source of law is "lov 4. juli 1991 nr. 47 om ekteskap" – hereby referred to as "the Marriage Act" - and its preparatory works. In addition to this, the Supreme Court has developed comprehensive prejudicial regulations through their rulings.

An English translation of the marriage act last amended January 2009 can be found at: https://www.regjeringen.no/en/dokumenter/the-marriage-act/id448401/

The terms used in this brochure will be the ones used in the official translation above. Quotes from the act will also be retrieved from the translation.

The brochure has been translated, edited and brought up to date according to the current state of the law as of November 2019. Jusshjelpa I Nord-Norge will not be held accountable for any subsequent changes after this date.

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Cathrine Lund, Magnus Krogstad, Malin Olsen Lilland, Ina Lothe Olsen, Ylva Sofie Røsberg, Marita Skjerlie, Ingvild Schwenke Jensen, Bjørn Eikanger Hanssen and Benedicte Ellinor Gjertsen.

1 Establishment of marriage

The conditions for establishment of marriage are listed in the first chapter of the Marriage Act:

- The parties must be 18 years or older.
- Marriage shall be contracted by your own free will and by your own consent.
- Marriage shall not be established between relatives in direct line of ascent or descent or between brothers and sisters.
- The marriage shall be monogamous. No person may establish a new marriage if a previous marriage or registered partnership subsists.
- Any person who has been declared to be without legal capacity must obtain the consent of his/her guardian to contract a marriage.
- No person suffering from a contagious disease that may be transmitted sexually may establish a marriage unless the other party has been informed of the disease.
- In order to establish a marriage in Norway, a foreign national must be lawfully resident in Norway.

These conditions will be tried by the National Population Register, which is the Norwegian tax office. When the conditions of establishing marriage are found to be in order, there will be issued a certificate stating that there is nothing to prevent the marriage from being contracted. The certificate is valid for four months from the date of issue, and must be present when the marriage is established.

Contact your local tax office to apply for a certificate, or see skatteetaten.no.

2 The property relations between spouses during marriage

2.1 Marriage settlement

A marriage settlement is an agreement between spouses regarding property arrangements in the marriage. In a marriage settlement the parties agree on how their wealth is to be distributed in the event of a divorce and/or death. If the marriage settlement is to be valid, certain formal requirements have to be fulfilled.

The formal requirements are to be found within section 54 of the Marriage Act. The first requirement is that it must be contracted in writing. The spouses must then at the same time in the presence of two witnesses who have been approved by both spouses, and who are present together and know that a marriage settlement is to be contracted, sign the marriage settlement or acknowledge their previous signatures. The witnesses also have to sign the marriage settlement in the presence of the spouses. If the marriage settlement is to

the advantage of one of the spouses only, it is valid even if the said spouse has not taken part in entering into the marriage settlement.

2.1.1 What can be agreed upon in a marriage settlement?

For further explanation of what is meant by «community property» and «seperate property», see 3.2 below.

Chapter 9 of the Marriage Act determines what can be agreed upon during the marriage regarding property arrangements etc. The chapter is exhaustive, and there is therefore no way to reach a settlement of another kind than specified in the chapter.

The types of agreements that require the form of a marriage settlement, are:

- Agreement regarding exemption from division (separate property) (Section 42 of the marriage act)
- Agreement regarding the right to remain in undivided possession of assets that are separate property (Section 43)
- Agreement regarding exemption from section 59 relating to unequal division in the event of seperation and divorce (Section 44)
- Agreement regarding division of community property (Section 45)
- Gifts between spouses (Section 50), ordinary gifts are exempted.

Agreements mentioned in section 42, 43 and 44 may be repealed or modified if both parties agree to it. In practice this is done by creating a new marriage settlement. The spouses may also return to the basis of the law, community property, by creating a new marriage settlement specifying this.

Please note that according to section 65 the provisions of the Marriage Act do not prevent the spouses from entering into an agreement regarding the settlement. This means that the spouses can agree to what they want in regard to the settlement when the breakup is a fact.

Larger gifts between spouses require the form of marriage settlement.

It goes without saying that spouses are free to give each other ordinary gifts. Larger gifts, however, cannot freely be given between the spouses. The reason behind this, is that the transfer of a larger gift also is a transfer of assets, and this may be of significance to the creditors of the giver. The creditors must be able to obtain information on these gifts.

The ;arriage Act therefore require that the spouses must create a marriage settlement for gifts given between spouses, unless they are regarded as ordinary. What lies within the term "ordinary gift" must be assessed in relation to the economy of the giver, among other things.

Gifts that consist of life insurance, pension etc. are exempted. There is no requirement of creating a marriage settlement for this.

If a marriage settlement is to be legally protected against the creditors of the spouses, it has to be judicially registered in the Register of Marriage Settlements at the Registry Office in Brønnøysund.

If the requirement of marriage settlement is not complied with, the transfer of the gift is invalid. This means that the giver is not required to fulfill the gift. If the gift is already transferred, this means that the giver can demand the gift returned.

2.2 The relations of ownership in marriage

Within marital law the terms “common property” and “sole property” are used regarding the relations of ownership in marriage. It primarily resolves around who has the right to dispose of the spouses assets.

If an object is a spouses “sole property” it means that said spouse is the sole owner of the object, and is free to dispose of it. Marriage entails no limitation of the spouse’s right to dispose of what he or she owns when the marriage is established or later acquires, unless it is otherwise provided. A spouse is therefore free to dispose of that which is his or hers sole property. This means that a spouse that has an object as sole property is free to sell, rent out or give away the object.

There are, however, exceptions to the right to freely dispose of assets that are sole property. If a spouse is to dispose of the common residence or ordinary household goods, this requires the consent of the other spouse. This is specified in section 32 and 33 of the Marriage Act.

When an object is the “common property” of the spouses, it means that they own the object together. In these cases, it is presumed that the spouses own the object with equal parts, unless something else is agreed upon, or if there is clear evidence to derogate the presumption of ownership in equal parts. Objects acquired during the marriage are not automatically common property between the spouses. In order for a spouse to be considered co-owner of an asset, he or she must prove that he or she contributed to the acquisition of the asset in question. Contribution to acquisition can be provided, for example, by cash deposits, work, down payment of loans or otherwise. In assessing who has acquired items of property that have been used by the spouses personally and in common, such as a common residence or ordinary household goods, due consideration shall be given to the work of a spouse in the home. This is specified in section 31 of the Marriage Act.

Whether an asset is sole property or common property depends on a concrete overall assessment. Whoever is the owner of the deed, or who is responsible for the mortgage loan on the property, are only moments in this assessment. Even if the deed only specifies one spouse as owner, the other is not cut off from being a co-owner if he or she contributes to

the acquisition of the property. However, disputes about ownership must be decided by a court if the parties are not able to reach an agreement.

The terms "common property" and "sole property" must not be confused with the terms "community property" and "separate property". While separate property and community property has significance in the economic division settlement after the end of marriage, sole property and common property are terms used to describe who has ownership of an asset.

2.3 Liability of spouses for debts

It is not automatic that spouses are liable for each other's debts. On the contrary, the main rule of law is that a spouse cannot contract a debt with effect for the other. However, joint responsibility for debt can be specially authorized. It can be agreed between the spouses (internally), or with the creditor (externally).

The external debt liability is the agreement the spouses have with the creditor for the loan (typically a bank). The internal debt ratio is the agreement on debt liability between the spouses. In many cases, there will be consistency between these two. If the spouses agree that both will pay off the loan with equal parts, a joint and several liability in the agreement with the creditor will correspond to the agreement between the spouses.

Often only the one spouse has an interest in getting the loan in question. For example a car loan where only the husband has a driving license. The wife has no interest in a car, and so the husband acquires it alone. In this case, it’s natural that the spouses agree that the husband is responsible for repaying the entire loan. However, the husband can obtain better loan terms in the bank if the wife signs as co-liable for the loan. This is a solution that is often chosen, and in such cases the debt ratio is different externally than internally between the spouses.

The wife’s co-liability is a joint and several liability unless otherwise is agreed upon. This means she is responsible for both the husband's ability to pay and the husband's willingness to pay. If the husband does not pay down the installments, the bank will be able to demand that the wife settles the loan. The bank is not concerned of whether the spouses had agreed otherwise. This situation would be very unfortunate for the wife, but in return she will be able to make a recourse claim on the basis of the agreement between her and her husband. She can demand that the husband repay what she covered of his debt. If the man refuses, the woman must go to court to get this claim consummated.

A joint and several liability applies even after the spouses are divorced.

2.4 The mutual duty of the spouses to provide support

The first paragraph of section 38 of the Marriage Act reads as follows:

"Spouses are jointly responsible for the expenses and the work required to maintain the joint household and to cover other joint needs, the upbringing of their children and the particular needs of each spouse. The spouses shall contribute by providing money, by working in the home or in some other way."

This is often referred to as the mutual duty of the spouses to provide support. A spouse may not necessarily fulfill this duty through monetary contributions. Natural support, for example through work in the common residence, is equated with support in the form of money. The duty to provide support only applies to the extent necessary to meet the needs mentioned in section 38.

The first sentence of the second paragraph of section 38 of the Marriage Act reads as follows:

"A spouse may to a reasonable extent demand money from the other spouse to cover such expenses as are mentioned in the first paragraph."

This does not apply unconditionally. It must appear reasonable. A spouse can therefore not demand money from the other spouse, only because he / she does not fulfill his / her duty under the first paragraph. Disputes regarding the mutual duty to provide support must be decided in court.

The duty to provide support only lasts until a break in cohabitation or a divorce. A spouse can never demand support on the basis of section 38 of the Marriage Act after the cohabitation is ended or the spouses are divorced.

2.5 Obligation to provide information regarding financial matters

The first sentence of section 39 in the Marriage Act reads as follows:

"Spouses are under an obligation to give each other the information necessary to assess their financial position."

This serves to ensure transparency between the spouses when it comes to their financial situation. In addition, such information may be relevant in determining any support demands, as well as by the financial settlement in the event of a divorce.

If a spouse suspects that the other is withholding certain information about their finances, he or she may demand such information from the tax authorities, banks or insurance companies. The duty of disclosure of these institutions occurs as soon as the other spouse approaches them. The reason for the spouse's inquiry is irrelevant. Regarding the banks' disclosure obligations, this is limited to the account balance. The spouse cannot claim full bank statements.

The spouses' obligation to provide information regarding financial matters also exists after the cohabitation is ended. The reasoning behind this, is that access is necessary in regards to the financial settlement after a divorce.

3 The property relations between spouses in the event of divorce

3.1 Are we obligated to distribute our assets according to the Marriage Act?

When the spouses distribute their assets at the end of the marriage, they have the freedom to enter into agreements on the settlement, according to section 65 of the Marriage Act. Such agreements may deviate from the rules of the Marriage Act regarding the distribution in the termination of marriage. For example, one can agree on a different distribution of assets than the equal sharing of the community property if the parties agree on this. Without an agreement, the distribution will have to be conducted in accordance with the rules of the M

While there is freedom of contract between the spouses, other agreements made must also be respected. For example, there may be restrictions on the freedom of contract if one of the spouses has received a gift or inheritance on certain terms, see section 56 of the Marriage Act. Agreements made in advance between the spouses are governed by Chapter 9 of the Marriage Act and require the form of a marriage settlement. A marriage agreement can be revoked if the parties agree on this, see section 46 of the Marriage Act.

There are no formal requirements for an agreement between the spouses upon termination of the marriage. It will, however, require the form of a marriage settlement if something in the contract is considered to be fulfilled in the future. For example if something has been agreed upon in case of a divorce and the divorce was never carried out.

3.2 Community property and separate property

"Community property" and "separate property" are terms used for the spouses' property relations. The terms are used to determine what constitutes the basis of the equal division of assets in the event of a divorce, and what can be kept out of the equation.

The terms are partly misleading in that "community property" is not about the fact that the spouses own something in common. If an asset is in the community property, the value of the asset must be included in the equal division of assets in the event of a divorce. It is only community property that is to be divided equally. A spouse who has funds in his or her separate property can keep this out of the settlement.

The main rule is that every asset in the spouses’ property is community property. This is the reason why the spouse's total assets should be shared equally between them, see section 58 of the Marriage Act.

It is important to remember that the term community property is only related to the value of the assets. An asset may be in the sole property of the spouse, while the value is a part of the community property. Even if the asset is in the community property, the spouse who owns the asset may demand to keep it in the event of a divorce. This also applies to assets that are common property if one spouse's shareholding is significantly larger than the other's. Even though one spouse is entitled to keep the asset itself, the value of the asset still must be included in the calculation of the total community property. If the value of the one spouse's sole property exceeds their half of the community property, it shall be equalized by a payment to the other spouse, see section 70 of the Marriage Act.

3.2.1 Regarding separate property

Spouses may agree that what they own or later acquire shall be kept outside the division settlement. This is called separate property, and is an exception to the main rule of community property anchored in section 42 of The Marriage act. Such an agreement may also be entered into before an imminent marriage, and may apply to both or only one's assets.

Establishment of separate property requires one of the actions specified in the Marriage Act. One of these actions is a marriage agreement. Secondly, a giver or a testator who leaves something to one spouse may decide that it should be separate property in that particular case.

In order for an agreement establishing separate property to be legally binding between the spouses and to their heirs, it must be done in the form of marriage settlement, see section 54 of the Marriage Act.

By establishing complete separate property, everything that the spouse owns is kept outside of the divorce settlement. Partial separate property may be limited to a physical object owned by the spouse, a fraction, percent or a specific value of their assets. It can also be agreed that wealth above or below a certain amount shall be a community property and object to equal division. The spouses can combine the options mentioned above. It is, however not allowed to agree on specific split fractions for the spouses' *combined* assets.

Conditions may be attached to an agreement regarding separate property. Firstly, the property can be made time-limited, e.g. so that the community property occurs if the marriage consists of a certain number of years, or if the spouses have children. The spouses may also agree that the separate property will become community property if the marriage ceases on the one's death. That way, they can secure themselves against community property in the event of divorce, while at the same time the widow get the rights to complete community property in the event of a death.

As an alternative to separate property in the event of divorce, spouses with an agreement of separate property can – in the event of a death - secure the remaining spouse by agreeing that they shall remain in undivided possession of assets that are separate property or parts thereof, see section 43 of the Marriage Act and section 9 of the Inheritance act. If the surviving spouse makes use of the right to remain in undivided possession pursuant to this section, his or her own assets which are separate property shall also be included in the undivided property unless it is otherwise agreed upon in a marriage settlement. If the deceased had children from another relationship, there must be given consent to the remaining spouse to sit in undivided possession, see section 10 of the inheritance act.

If the spouses wish to amend or revoke a previous agreement on separate property, this must be done in the form of a marriage settlement, see Section 46 of the Marriage Act.

The spouses cannot agree on other wealth arrangements than those listed in Chapter 9 of the Marriage Act. An agreement that goes beyond the boundaries of the Marriage Act will not be binding for the spouses or their heirs.

An inheritor or someone wishing to give a gift may determine that the conditions mentioned above are the terms of the given gift, or inheritance to be received. For example, a testator may decide that the inheritance he leaves behind must be in the heir's separate property. This must then be done in a will. Gifts do not have any formal requirements, but the recipient has the burden of proving that the gift is his separate property. It is therefore advisable to have the transfer written down. Such a clause cannot be changed by the spouses unless specifically or clearly stated by the giver or the testator.

If a spouse uses separate property to acquire new asset, these assets become separate property, see Section 49 of the Marriage Act. Such an asset only becomes a separate property to the extent it is acquired with separate property. That is, if community property is used for the acquisition, the part that is separate property will be the ratio between the purchase price and the values derived from the community property.

The same applies where the separate property provides a return, see Section 49 of the Marriage Act. Returns covered, for example, will be interest on bank deposits, dividends on shares or rental income from real estate.

3.3 Determining the values to be distributed

If the spouses do not agree on the value of an asset, the turnover value will usually be assumed to be the real value.

The turnover value can be obtained by putting the item up for sale, or having it determined by an independent appraiser that the spouses agree on. If it is an object one of them shall take over or keep as his or her property, and the spouses do not agree with the stipulated

appraisal, each of them may demand a probate valuation under section 69 of the Marriage Act.

A probate valuation is held by the district court and is a legally binding valuation of the object. As a general rule, the probate valuation is set at the asset's turnover value.

Changing rates may be required whether the estate is settled publicly or privately. The cost of incurring or changing rates is the spouse's joint expense.

If you are dissatisfied with the probate valuation, you can request a new one. If the petition for a new valuation is unfounded, the person who requested it may risk having to pay all the costs of the new valuation themselves.

Either spouse can demand that the objects none of them wants to keep, shall be sold, see Section 71 of the Marriage Act.

3.3.1 The main rule is that all values are shared equally between the spouses

As a main rule, the values that are shared between the spouses should be shared equally between them. This is referred to as equal division, see section 58 of the Marriage Act. There are exceptions to this rule (see section 3.3.2 on unequal division, 3.3.3 on the withdrawal of their share in advance and 3.3.4 on compensation).

The rule of equal division means that the value of what each spouse owns should be shared equally with the other spouse. This means that the parties are entitled to half the value of what the other spouse owns and what the spouses own together.

Only the net value of what each spouse owns is to be shared. Therefore, as a general rule, the parties can first deduct the debt each party is responsible for. If the spouses are jointly liable for debt, a deduction is made for the proportionate amount of debt the spouse is liable for. If a spouse only has funds that are jointly owned, you can deduct any debts you have.

Debts incurred by a spouse in connection with the acquisition or expense of community property may be deducted even if they have assets that qualify for unequal division or separate property. Debts incurred by the spouse in connection with the acquisition or expense of assets that are separate property can only be deducted when the total value of the separate property and assets that qualify for unequal division are not large enough to cover the debt. For other debts, such as student debt, a proportionate deduction can be made.

If one of the spouses has more debt than his or her assets are worth, there will be no community property left on his part. However, this spouse is still entitled to half the value of community property of the other spouse.

The values that are subject to division are those that existed at the cut-off date. According to section 60 of the Marriage Act, the cut-off date is the time either when the county governor received a petition for separation or divorce, when the cohabitation interrupted, when the spouses agreed to division or when a demand for division was received by the court. The values and liabilities the spouses acquire after the cut-off date shall be kept out of the division.

3.3.2 Unequal division

There are certain exceptions to the general rule of equal division of the spouse's total assets (Section 58 of the Marriage Act). One exception is the rule of unequal division, see section 59 of the Marriage Act.

Section 59 of the Marriage Act states in the first paragraph that:

> *" A claim may be made to withhold from the division the value of assets that can clearly be traced back to means that one spouse had at the time the marriage was contracted or has later acquired by inheritance or by a gift from a person other than his/her spouse."*

The rule of unequal division means that each of the spouses, as a general rule, may withhold from the division the value of assets they brought into their marriage. The same goes for the inheritance and gifts received during marriage.

The purpose of the rules was to reduce the need for a marriage settlement containing a clause of complete separate property. However, it is not a completely satisfactory alternative to separate property.

As stated in section 59, you can keep **values** out of the division. The rules do not give the right to keep objects out of the division. Furthermore, the values must originate before the marriage was entered into, possibly during the marriage, but only if received by inheritance or gift from someone other than the spouse. Gifts also include gift sales, i.e. where you have acquired values below market price. A claim like this has to be thoroughly documented.

It is the retained values at the cut-off date that may be subject to unequal division. If the values are already consumed, unequal division cannot be demanded. Conversion of values, on the other hand, is not excluded, but here the documentation can cause problems.

The value subject to unequal division is a net value. If the spouse demanding unequal division was insufficient at the time of the marriage (the debt exceeded their values), there will be no grounds to claim unequal division. This differs in the case of inheritance or a gift received after the parties entered into marriage. Here, the recipient will be able to divide the whole value unequally unless there is debt connected to the gift or inheritance.

Examples of unequal division:

- Down payment of debt - If one of the spouses uses inherited funds to down pay the mortgage, this spouse has increased the net worth of the property. He or she can therefore claim the value unequally divided.
- Value increase - The right to unequal division includes only the increase in value that is a consequence of the general rise in prices (inflation). Value increases due to market fluctuations will not be clearly traced back to inheritance, etc.
- Returns - Interest on bank deposits, dividends on shares and rental income are examples of returns. There is disagreement in legal theory whether these funds are subject to unequal division, and there is no clear ruling on this issue by the Supreme Court so far.

It is important to note that unequal division does not happen automatically. The spouse who thinks he or she has an unequal division claim must demand it. If the spouses do not agree that one spouse has a claim on unequal division, it is up to the court to decide.

Note that, should the rule result in unreasonable results, it can in some cases be set aside.

3.3.3 Special exemptions from the division

Section 61 of the Marriage Act contains rules for items that can be withheld prior to the division.

These assets are special exceptions to the rule of equal division. Completely personal items are excluded from the division, such as clothing, family papers, and family photos. Rights in public social security schemes, pension schemes, as well as annuities or life insurance that do not have repurchase value that can be realized can also be withheld from the division.

If one spouse has assets that cannot be sold or transferred in any other way, these are also excluded. Such values can for example be a personal right of use for a cabin. However, for larger values, the other spouse may claim compensation on the basis of unreasonableness.

If a spouse has suffered personal injury, he or she may demand to keep the retained value of paid compensation, social security or insurance excluded from the division. A condition for this is that the amount should cover future losses. Things that are acquired for special use for the children, such as strollers, playpen and the like, are kept by the person who is to take care of the children. The values of these are not subject to equal division.

3.3.4 Claims for compensation

The main rule is equal sharing of the community property, unless both spouses have agreed to separate property. Still, the law allows one spouse to sue the other and claim compensation if the other spouse has used community property to increase his or her own

separate property or acquire rights or assets that can be withheld under the Marriage Act section 61 (c). The same applies to the acquisition of rights as mentioned in section 61 (b) of the Marriage Act if the expenses exceed what the court considers reasonable.

In reality, the most important rule in section 63 of the Marriage Act is that compensation may be claimed where a spouse has *used his or her* community property to increase *his or her* separate property. The scope of the provision is presumed to be limited towards cases in which community property funds finance regular maintenance of the separate property.

Compensation may also be claimed when a spouse has in an improper manner significantly diminished the basic estate to be divided. This is a discretionary rule, which interferes with the general rule that spouses freely dispose of what each of them owns. The result of this is that the rule requires a great deal to be done for it to be used, and the basis for division must be diminished by highly-criticized circumstances the spouse is responsible for.

Claims for compensation can only be applied when the spouse's creditors have been granted, cf. section 63 third paragraph of the Marriage Act. If the claim is not covered during the settlement, it cannot be claimed later. The parties may agree that the compensation shall be paid in installments.

Compensation may also be awarded by the court under section 73 of the Marriage Act if a spouse has significantly contributed to increasing the other's separate property. Both direct and indirect contributions will be moments of significance.

Compensation under this rule is determined at the discretion of the court. The nature and extent of the participation is of importance here, as well as the reason why the parties have agreed upon separate property and the nature of the separate property.

3.4 Distribution of spouses' items

When the values each spouse are to be left with are determined, the question arises as to how the individual items should be distributed. The spouses are free to enter into agreements at this point, and are therefore free to agree on who should be assigned the individual items when the division takes place.

If the spouses do not agree on the distribution, the following rules can be applied.

Under Section 71 of the Marriage Act, each of the spouses may claim assets that are not kept by any of them sold.

Under Section 66 of the Marriage Act, each of the spouses has the right to retain that which they "fully" or " to all intents and purposes" own. In essence, an ownership interest of approx. 75%. This right to assets also applies where the value of the assets exceeds the value the spouse should get out of the division. But in that case, the spouse must pay the other

spouse the difference between the value of the asset and the person's rightful division value, see Section 70 of the Marriage Act.

When deciding what a spouse fully or to all intents and purposes owns, the owner relationship under section 31 of the Marriage Act is crucial. Therefore it will not be possible for one of the spouses to have a better right than the other to keep assets in common property. This does not apply, however, if one spouse's joint share is substantial, see Section 66 of the Marriage Act.

Exceptions may be made to the main rule on distribution of assets to one spouse if it will be "obviously unfair", see Section 66, first paragraph, of the Marriage Act. However, the exception is of limited importance. "Obviously unfair" are strong words, thus indicating a high threshold for use of the exception.

In addition, there are special rules for housing and furniture. These exceptions from single distribution of assets are stated in section 67 of the Marriage Act:

> *"When there are special reasons for doing so, a spouse may, regardless of previous ownership, demand to take over:*
>
> *a. real property or a share of real property that has served exclusively or primarily as a common residence, unless the other spouse has an allodial right to the property, or it was acquired from his or her family by inheritance or gift,*
>
> *b. a part or a share in a housing society or a bond to which the right of the spouses to lease their common residence has been attached,*
>
> *c. a lease entitling them to the common residence, or*
>
> *d. ordinary household goods in the common home.*
> *In considering the matter, importance shall be attached to the needs of the spouses and their children."*

The requirement for «special reasons» cannot be interpreted too strictly. The main rule is that the person who has brought in the asset can claim it brought out, see Section 66 of the Marriage Act. However, the assets mentioned in section 67 of the Marriage Act will often have both spouses being equally strongly linked to and having an equally strong need for. When determining who should be assigned assets under section 67 of the Marriage Act, emphasis should be placed on the needs of the spouses, and the needs of the children, if there are children involved.

The main rule in section 66 of the Marriage Act should be assumed where it does not appear more reasonable that the home or the furniture is allocated to the other spouse.

3.5 Private or public administration of the estate?

Most spouses administrate the marital division privately. This means that the spouses themselves agree on how they wish to distribute values and items among themselves, see Section 65 of the Marriage Act.

The benefits of administering the division privately are that spouses have full freedom to enter into agreements within the aforementioned limitations. See also point 3.1. The spouses have the opportunity to negotiate in the process, and the goal should be to come up with a solution both parties are satisfied with. When the parties agree on the distribution, this is written down in a private division agreement. If you want to use a lawyer it is possible, but not necessary. Therefore, a private division does not have to incur significant costs to the spouses.

3.6 Regarding public administration of the estate

If the parties to a marriage settlement do not agree on the division of their community property, a public division of the spouses' community property may be made by the district court in accordance with the Probate Act.

The transfer is made by the district court if one or both spouses requestso, see section 53, first paragraph, no. 1. The transfer process is then carried out by the district court in the district where the parties had their last joint residence, if one or both parties reside in this district at the opening of the division, see the Probate act section 8, first paragraph, first sentence.

The District Court's administration includes those assets that are community property between the parties, and assets that are otherwise relevant for the settlement, see section 54, first paragraph, of the Probate Act.

Before a public administration of the estate is opened, a preparatory hearing is usually held. The aim of the hearing is to arrive at an amicable solution between the parties. For this meeting, both parties and their potential attorneys will be present.

Often, spouses manage to reach agreement on the points of dispute during such a hearing. If agreement is not reached, at least it is made clear what the parties still disagree with.

If a public administration of the estate is opened, the court will appoint a trustee, normally a lawyer. After a public administration has been opened in the estate, the court will consider and reach a decision on the disputes the parties disagree on.

3.6.1 Expenses related to a public adminitstration of the estate

3.6.1.1 Expenses related to the preparatory hearing

In the event of a request for public administration of the estate, the person submitting the request must pay an advance fee for the preparatory hearing. This costs 2 times the court fee.

The court fee (often abbreviated R) is set in regulations. As of January 1, 2019, the court fee is NOK 1 150. Thus, NOK 2 300 must be covered at the same time as the request for public administration.

3.6.1.2 Advances to cover estate costs

If you agree on the settlement at the preparatory hearing, no public administration of the estate will be opened, and you can then disregard the expenses under sections 3.6.1.2 and 3.6.1.3.

The person requesting public administration must pay a deposit for the cost of the division before public administration can be opened.

For the administration of the estate it is paid 25 times R (25 x NOK 1 150). This means that the person requesting public administration must pay NOK 28 750 as of 1 January 2019.

However, advances to cover estate costs when requesting a public administration of an estate containing community property are determined by the individual district court and may therefore vary somewhat. Normally it is about NOK 30 000.

In other words, the district courts can in some cases operate with a slightly higher advance rate than the statutory division fee. Contact your nearest district court for more information on the deposit you must provide.

3.6.1.3 The expenses of the trustee

Furthermore, the parties must cover the expenses of the trustee appointed by the district court. It is very difficult to assess how expensive this process will be in advance. What is covered are, among other things, costs associated with the trustee's fees, any appraisals, insurance, etc.

It is therefore difficult to estimate the total scope of the costs that can be incurred in such a process. However, it should be noted that under normal circumstances public administration of an estate is considerably more expensive compared to private administration of the estate.

3.6.2 Process risk when requesting public administration of the estate

There is always a certain risk when requesting public administration, and it is often difficult to predict the outcome in individual cases. If the estate's total value holdings after loan coverage is very low, it may not even be profitable to request a public change.

Consequently, it is a practical prerequisite for requesting a public administration that one is sure that the estate's values exceed the parties' debts, etc.

More information about public administration can be found at www.domstol.no/en/marriage-and-inheritance/Divorce---separation/. It is strongly recommended that you familiarize yourself with this information, or contact your nearest district court.

3.6.3 Writing a request for public administration

When it comes to writing the public administration request itself, it is relatively easy. All you need to do is to send a letter to the district court in the district where you had your last joint residence. The letter must contain some personal information, and income and wealth information from the year before the parties moved apart must be attached.

The request must contain the following information:

- Name, address, birth and social security number of both spouses
- Address of last joint residence
- Copy of separation or divorce grant from the County Governor
- Information about agreements, marriage settlements etc.
- Best possible overview of your assets and liabilities at the cut-off date
- Account statements and tax returns for your last year together

3.6.4 Can the right to request public administration lapse?

In principle, there is no statutory deadline for requesting public administration. However, the right to request public administration will lapse if the parties enter into a final agreement regarding the division between them.

3.6.4.1 The right may lapse by agreement

Where there is an agreement between the spouses, public administration cannot be requested, as this agreement is considered binding.

This is based on the rule in section 65 of the Marriage Act that the settlement between two spouses should preferably be made in agreement between them. The rules of marriage law on the distribution of values and assets between spouses in the event of a marital break come secondarily.

If the division is settled by agreement, it is not permissible to make the division again unless it was found that the agreement between the parties was unreasonable for one of them. Where there is already a division agreement, any dispute regarding interpretation or enforcement of the agreement must be settled in court.

3.6.4.2 Agreement due to inaction

Where the parties have not reached agreement on the division between them, the right to request a public administration still may have lapsed. Inaction by the parties can mean that an implicit agreement has been entered into.

If one of the parties remains inactive over a long period of time, the other party may have a legitimate expectation that the counterpart will refrain from demanding a division. The other party may then have the right to adjust according to circumstances. However, there are strict requirements for this condition to be met.

4 Useful links

Here is a short list of useful websites that can provide additional information in the area of marriage law:

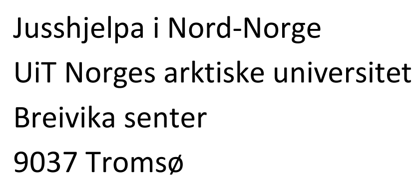
(Norwegian) Jusshjelpa i Nord-Norge – www.jusshjelpa.no

(Norwegian) Lov 4. juli 1991 nr. 47 om ekteskap – www.lovdata.no/NL/lov/1991-07-04-47

(English) The Marriage Act - www.regjeringen.no/en/dokumenter/the-marriage-act/id448401/

(Norwegian) Register of Marriage settlements – www.brreg.no/ektepakt/

(English) The Courts website nettside – www.domstol.no/en/



Jusshjelpa i Nord-Norge
UiT Norges arktiske universitet
Breivika senter
9037 Tromsø

Telephone: 776 44 559
www.jusshjelpa.no