

Spousal Agreements

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The Family Code of Ukraine of 10 January 2002 No. 2947-III (effective since 2004) (*Family Code*), sets out the basic principles and regulations of property relations of spouses, including civil agreements, which may be entered into by and between spouses.

The common ownership presumption applies to the property of a married couple. According to this legal presumption all assets, including property, property rights, cash, salary, participation interests, shares etc, which were acquired during marriage shall be considered as the common property of spouses, i.e., shall be co-owned by spouses (*Acquets*). Such assets shall be considered as acquets regardless of the fact as to who of the spouses acquires title thereto. This presumption is traditional for the Ukrainian legal system. However, the couple may modify the legal status of their assets by virtue of civil agreements, which are permitted by law.

In particular, a marital separation agreement may serve as a proper legal instrument for persons who would like to benefit from modifying ownership title. Separation of co-owned property might be conducted during marriage, during or after divorce. If a marital separation agreement deals with real estate, it shall be notarized. Usually co-owned assets of spouses are separated in kind. In certain cases assets cannot be divided in kind, as the separation would lead to a loss in the value of an asset or to impossibility of use for the original purpose. In this case such assets are awarded to one of the spouses while the other spouse shall be reimbursed its value.

If the spouses are unable to agree on separation of their common property by mutual consent, the dispute between them shall be settled in court. The law does not fix any limitation period for separation of the property of a married couple. If an ex-spouse applies to a court after getting divorced, the limitation period shall be three years starting from the moment when such ex-spouse learned or should have learned about the breach of his/her property rights.

The effective *Family Code* introduced equal ownership status between a married and an unmarried couple, which is a novelty of family law in Ukraine. Pursuant to Article (74) of the *Family Code* if a man and a woman live together as a family, but are not married to one another or with any other persons, the assets acquired during cohabitation shall, in fact, be considered to be their common property, i.e., shall be co-owned by husband in fact and wife in fact. In a separation agreement an unmarried couple may agree to the contrary, namely, to state that all assets acquired by them shall be considered as personal property separated from marital common property.

A marriage property contract may deal with property issues arising between spouses and/or between spouses and their children only and may not regulate the personal legal relations of spouses. In a marriage property contract the spouses can decline the common ownership principle and make provision for a separate regime of property. In this case all assets acquired during marriage shall be considered the separate property of spouses.



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By law the shares of the spouses shall be considered as equal. This presumption of law is effective even in the event of one of the spouses earning no personal income due to taking care of a child, looking after the house or due to other essential reasons, such as illness, etc. However, in a marriage property contract the spouses can also agree that their shares in common property shall not be equal and determine the amount of their shares respectively.

A marriage property contract can also cover the issues of separation of co-owned property in case of possible divorce, child alimony issues, spouse maintenance issues and other property related issues.

The couple may enter into a marriage property contract upon filing an application for registration of marriage to an "ORAGS" (a marriage registration body) or after getting married. A marriage property contract should be notarized.

The spouses may terminate or alter their marriage property contract upon mutual consent. The law prohibits alteration or termination of marriage property contract at the initiative of just one of the spouses. Spouses may refuse from a marriage property contract wholly or in part. They may also set the validity period of a marriage property contract or certain provisions of a marriage property contract.

Spouses may make a common will (Article 1243 of the *Civil Code of Ukraine*). This will may relate to the common property of the spouses. Once executed, such common will of the spouses can be changed as long as both spouses are alive. This means that a surviving spouse, despite being the sole owner of the property concerned, may not alter the common will and/or alienate the property.

The spouses may enter into a spouse's alimony agreement envisaging support obligations of one of the spouses, their validity period, periodicity and amounts due. Such an agreement is subject to notarial attestation. A spouse may substitute (terminate) the right for maintenance by virtue of obtaining ownership title for certain real estate from the obliged spouse under the relevant agreement. The termination of maintenance rights

may also be done upon receipt of a one-time payment from the obliged spouse. This agreement should be notarized.

The spouses may conclude with each other any other agreements pertaining to their co-owned or individual property, such as purchase and sale agreement, lease agreement, pledge agreement, gift agreement, etc. However, the law requires that such agreements should not be very unfavorable for a spouse.

The spouses may also dispose of their shares in common property in favor of each other or in favor of other persons. Agreement re disposal of co-owned property in favor of other persons requires prior separation of those shares which are co-owned.

The *Family Code* sets out a special provision with regard to an agreement re the regime of real estate usage, in particular, pursuant to Article 66 of the *Family Code* terms and conditions of such agreement, if it is notarized, shall be binding upon an assignee of the spouses. The spouses may also agree upon a regime of real estate usage in the event of possible divorce.

Foreigners shall be granted family law rights and obligations in the sphere of civil agreements of the spouses, which are equal to the family law rights and obligations of natives.

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