

民法 ๑

The German Civil Code

Book 4

Family law

Section 1408

Marriage contract, freedom of contract

(1) The spouses may provide for their matrimonial property arrangements by contract (marriage contract), and in particular even after entering into marriage terminate or alter the matrimonial property regime.

(2) In a marriage contract the spouses may also, by an express agreement, exclude the equalisation of pension rights. The exclusion is ineffective if within one year after the contract is entered into a petition for divorce is filed.

Section 1410

Form

The marriage contract must be recorded by a notary, and both parties must be present.

Section 1412

Effect as against third parties

(1) If the spouses have excluded or altered the statutory matrimonial property regime, they may derive from this, as against a third party, objections to a legal transaction that was entered into between one of them and the third party only if the marriage contract has been entered in the marriage property register of the competent local court or was known to the third party when the legal transaction was entered into; objections to a final and absolute judgment which has been pronounced between one of the spouses and the third party are admissible only if the marriage contract was

registered or known to the third party at the time when the legal dispute was first pending at court.

(2) The same applies if the spouses terminate or alter by marriage contract a provision for the marriage property arrangements which is entered in the marriage property register.

Section 1413

Revocation of permission to manage assets

If a spouse permits his assets to be managed by the other spouse, then the right to revoke the permission at any time may be excluded or restricted only by marriage contract; however, revocation for a compelling reason remains admissible.

Section 1415

Agreement by marriage contract

If the spouses, by marriage contract, agree on community of property, the following provisions apply.

Section 1416

Marital property

(1) The property of the husband and the property of the wife, as a result of community of property, become the joint property of both spouses (marital property). The marital property also includes the property that the husband or the wife acquires during the period of community of property.

(2) The individual items become joint property; it is not necessary to transfer them by legal transaction.

(3) If a right that is registered in the Land Register or may be registered in the Land Register becomes marital property, each spouse may require the other to cooperate in correcting the Land Register. Similar provisions apply if a right that is registered in the ship register or in the ship construction register becomes marital property.

Section 1417

Separate property

- (1) The separate property is excluded from the marital property.
- (2) Separate property is the items that may not be transferred by legal transaction.
- (3) Each spouse manages his separate property independently. He manages it for the account of the marital property.

Section 1418

Reserved property

- (1) The reserved property is excluded from the marital property.
- (2) Reserved property is the items
 1. that by marriage contract are declared the reserved property of a spouse,
 2. that a spouse acquires as a result of death or that are given to him by a third party free of charge, if the testator specified by will or the third party specified when making the disposition that the acquisition is to be reserved property,
 3. that a spouse acquires on the basis of a right that is part of his reserved property or as compensation for the destruction of, damage to or removal of an item that is part of the reserved property or by a legal transaction that relates to the reserved property.
- (3) Each spouse manages his reserved property independently. He manages it for own account.
- (4) If assets are part of the reserved property, this is effective against third parties only under section 1412.

Section 1419

Joint ownership

(1) A spouse may not dispose of his share of the marital property and of the individual items that are part of the marital property; he is not entitled to demand partition.

(2) The debtor may set off against a claim that is part of the marital property only a claim whose discharge he is entitled to demand from the marital property.

Section 1420

Use for maintenance

The income that falls within the marital property is to be used for the maintenance of the family before the income that falls within the reserved property, and the capital of the marital property is to be used for the maintenance of the family before the capital of the reserved property or the separate property.

Section 1472

Joint management of the marital property

(1) Until the partitioning, the spouses manage the marital property jointly.

(2) Each spouse may manage the marital property in the same way as before the termination of the community of property until he knows of the termination or ought to know. A third party may not rely on this if, when he enters into a transaction, he knows or ought to know that the community of property has ended.

(3) Each spouse is obliged to the other to cooperate in measures that are necessary for the proper management of the marital property; each spouse may take the measures that are necessary for preservation alone.

(4) If the community of property ends as the result of the death of one spouse, the surviving spouse must carry out the transactions that are necessary for proper management and may not be postponed without risk until the heir can make other

provision. This duty does not exist if the deceased spouse managed the marital property alone.

Section 1558

Competent registration court

(1) The entries in the marriage property register are to be made at every local court in whose district even only one of the spouses has his habitual residence.

(2) The *Land* governments are authorized to delegate by statutory order jurisdiction for maintaining the register to one local court for the districts of several local courts. The *Land* governments may delegate the authorization to the *Land* justice administration authorities by statutory order.

