

**NATIONAL REPORT: NORWAY**

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August 2008

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**A. GENERAL**

**1. Are there special rules concerning the property relationship between spouses (explaining what is meant by spouses)?**

Special rules concerning the property relationship between spouses are found in the Marriage Act 1991, which, according to the latest amendments of June 2008, allows couples of the same sex, as well as male-female couples, to enter into a marriage.

**a. upon marriage**

Marriage entails no limitation of the right of a spouse to dispose of what he or she owns when the marriage is contracted or later acquires, according to the general rule regarding spouses' right of disposal in § 31 para. 1 Norwegian Marriage Act.

**b. during marriage**

During marriage there are two spheres of property – each spouse owns his or her property separately. According to the general rule regarding the spouses' right of disposal in § 31 para. 1 Norwegian Marriage Act, marriage itself entails no limitation of the right of a spouse to dispose of what he or she owns when the marriage is contracted or later acquires. The only exception is the limited right to dispose of the common residence and household goods etc. during marriage: According to § 32 and 33 Norwegian Marriage Act a spouse may not, without the consent of the other spouse, transfer, mortgage, lease out, etc. a common residence, ordinary household goods in the common home or objects specified for use by the children.

The fact that, in practice, there is no community of property during marriage is also reflected in the general rule regarding the liability of spouses for debts: According to § 41 Norwegian Marriage Act, a spouse may not contract a debt which affects the other spouse unless this is specially authorized.

**c. upon separation**

Upon separation, the assets shall be divided between the spouses pursuant to the provisions of Ch. 12 Norwegian Marriage Act, unless otherwise prescribed by statute, a marriage settlement (a nuptial agreement) or a stipulation by a donor or testator, § 56 Norwegian Marriage Act.

**d. upon death**

When one of the spouses has died, the assets of the spouses shall be divided between the surviving spouse and the heirs of the deceased pursuant to the provisions of Ch. 15 Norwegian Marriage Act, unless the surviving spouse makes use of the right to remain in possession of the undivided estate or unless otherwise prescribed by statute, a will, an agreement between the spouses or any provision of a donor or testator (§ 76 Norwegian Marriage Act).

When the assets of the spouses are to be divided between the surviving spouse and the heirs of the deceased, the majority of the provisions in Ch. 12 regarding the division of assets in the event of separation and divorce, will apply correspondingly (§ 77 Norwegian Marriage Act).

**e. upon divorce**

If the spouses have not already separated, the assets shall be divided between the spouses upon divorce, pursuant to the provisions of Ch. 12 Norwegian Marriage Act, unless otherwise prescribed by statute, a marriage settlement (a nuptial agreement) or a stipulation by a donor or testator (§ 56 Norwegian Marriage Act).

**f. upon annulment**

If the marriage is declared null and void pursuant to § 16 Norwegian Marriage Act, no division of assets takes place.<sup>1</sup>

**2. Give a brief history of the main developments and most recent reforms of the rules regarding the property relationship between spouses.**

Until 1927, the default matrimonial property regime in Norway was a genuine community property regime where each of the spouses owned half of the assets, and an equal division of property took place upon dissolution. The husband exercised sole control over the assets during marriage, although from 1888, a wife could exercise control over her own income. In 1927, women in Norway achieved legal independence in marriage. The Marriage Act 1927 was the result of Nordic legal co-operation which led to almost identical Acts in the Nordic countries. Whereas previously a husband had controlled the property of both spouses, under the new law women were given the right to dispose of the property they owned. The transition from the old to the new Norwegian Marriage Act was arranged so that the former common property was assigned entirely to the husband.

Each spouse could now incur debts only affecting himself or herself and conclude binding agreements with the other, in the same way that each party was legally able to do with third parties. The law prevented a husband from administering his wife's resources, for instance her inheritance. In relation to the creditors of the spouses, ownership was of conclusive significance. After 1927, a spouse's creditors could seize only property owned by the spouse who had become indebted to them.

An equal division of property took place upon the dissolution of marriage. In this deferred community property system, the interests of the individual and the community of marriage interests were subject to a different, pertinent set of rules: one set being applicable during the marriage, another set of rules came into play on its termination.

Spouses could opt out of this default regime by a nuptial agreement. If the couple had agreed to have separate property, each spouse retained whatever he or she owned upon the termination of the marriage.

The basic structure is similar today as it was in 1927; however, in Norway both sets of rules – the rules during marriage and upon termination – have undergone considerable change:

As mentioned, each spouse owns his or her property separately during the marriage under a deferred community property regime. At the time the Norwegian Marriage Act 1927 was being

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<sup>1</sup> See the preparatory works Norwegian Marriage Act, Ot.prp. No. 100 (2005-2006), p. 59-60.

drafted, it was taken for granted that ownership should be decided on the basis of the general principles of property law relating to ownership, e.g., that the spouse who had paid for an item of property would normally own it, or that the spouses could regulate ownership contractually. This contractual rule also related to land. There are no formal requirements in Norwegian law - ownership is obtained regardless of title, and a legally enforceable agreement relating to land does not have to be in writing, although this is normally the case. In the preparations for the law it was foreseen that it might be difficult to keep track of who owned what property in a marriage. One assumed, nevertheless, that, in practice, the system would not lead to any major problems. The preparatory works of the Norwegian Marriage Act 1927 expressly mentioned that a wife usually had no assets of her own other than what she received in the form of an inheritance or gifts. Such items could easily be distinguished from the property that a husband acquired during the course of the marriage. Gradually, however, cases were brought to court where a wife had contributed to her husband's acquisition of property, often the common residence. The question arose whether the wife was a co-owner even though her husband was regarded as the purchaser and the house was registered in his name. If the wife had made a direct financial contribution to the purchase price, there was normally no problem. The view then taken was that the spouses had made a tacit agreement to the effect that they should both be owners, even though the husband formally appeared to be the owner. But, after a while, cases were brought to court where the wife had made only an indirect contribution, in the form of child care, housework and/or by covering the family's current expenditures on food, clothing, etc. In 1975, the Norwegian Supreme Court acknowledged indirect contribution in the form of child care and housework as a relevant factor when determining the ownership of specific assets. According to the Court's decision, a wife who stays at home and cares for small children can become a co-owner of the house purchased during the marriage by her husband solely with his income earned during the marriage.<sup>2</sup> The house in question was acquired during the marriage and the husband held the title. An indirect contribution in the form of covering more than the spouse's share of consumption expenses was acknowledged, as well. Even if the spouses had agreed through a nuptial agreement to a separate property regime, this rule relating to the acquisition of property was applied, as long as the spouses had not agreed upon who is to be deemed the owner of the particular items of property.<sup>3</sup> The Norwegian Supreme Court has also determined that creditors must respect co-ownership rights of this nature.<sup>4</sup>

This rule was partly codified in the Norwegian Marriage Act 1991, § 31, para. 3. The rule covers not only the common residence, but also other items of property for common personal use, e.g. a second home, a car or a boat, and applies unless the spouses have expressly agreed upon who is to be considered the owner. An indirect contribution, in the form of covering the family's current expenditures is acknowledged, as well.<sup>5</sup>

As long as the spouses have not agreed upon who is to be deemed the owner of the particular items of property, co-ownership is based on what the parties contributed to the acquisition of the property. According to the preparatory works of the new Norwegian Marriage Act 1991, the homemaker's co-ownership is based on "economic realities" and it is emphasised that no transfer of property occurs by declaring that the wife is a co-owner. The same text also states that "co-ownership is based on the contribution from each of the spouses that lies behind the acquisition."<sup>6</sup> A similar course of legal development was in progress in the lower courts of Denmark and Sweden until the higher courts of these countries halted its development.

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<sup>2</sup> Norwegian Supreme Court Reports 1975, p. 220.

<sup>3</sup> Norwegian Supreme Court Reports 1980, p. 1403 and 1982 p. 1269.

<sup>4</sup> Norwegian Supreme Court Reports 1978, p. 871.

<sup>5</sup> Norwegian Supreme Court Reports 1977, p. 533 and 1979 p. 1436.

<sup>6</sup> NOU (Official Norwegian Report) 1987: 30, p. 70-71.

The Norwegian rules governing the division of property upon the termination of marriage were modified in 1991. According to the Norwegian Marriage Act 1991, it is no longer the case that all the property is shared. Even the previous Norwegian Marriage Act allowed for exceptions in the case of a brief marriage. The 1991 Norwegian Marriage Act introduced the so-called “uneven distribution rule” in § 59 para. 1. This rule provides that the value of assets that can be traced back to means that a spouse owned at the inception of the marriage or later acquired by inheritance or gifts from persons other than a spouse, shall not be shared on the termination of the marriage. Thus, it is now the general rule that only the assets acquired during the marriage shall be divided equally.

In the preparatory works of the Norwegian Marriage Act it is pointed out that the basis for the equal division rule is that both spouses were presumed to have made a contribution to the acquisition, and that this argument is not applicable to property that a spouse owned before marriage or acquires later by inheritance or gifts.<sup>7</sup> The justification for the uneven distribution rule is similar to the justification that lies behind the rules relating to the acquisition of the right of ownership. The spouses have engaged in a community of work to which each has made a contribution. The two sets of rules that were to provide individual and community interests respectively, have therefore drawn closer to each other, and both sets of rules embrace the idea that the spouses’ contributions should be decisive in determining rights.

**3. Are there any recent proposals (e.g. parliament, reform bodies, academic community) for reform in this area?**

There are no recent proposals for reform regarding the property relationships between spouses.

**4. Briefly explain whether or not the rules regarding the property relationship between spouses also apply to registered or civil partnerships?**

The rules regarding property relationships between spouses also apply to registered partnerships, § 95 Norwegian Marriage Act. As the Norwegian Marriage Act allows couples of the same sex to enter into a marriage, pursuant to the latest amendments of June 2008, the Act repeals the Registered Partnership Act 1993. Registered partners have the possibility to convert the partnership into a marriage, § 95 Norwegian Marriage Act.

**5. Are the rules concerning the matrimonial property relationship between spouses exclusive or are there other mechanisms of property law, such as joint ownership, which also play a role in relation between spouses?**

Rules regarding ownership play a role in relations between the spouses. Under the deferred community property regime spouses own their property separately – two spheres of property exist during marriage: spouse A’s (deferred) community property and spouse B’s (deferred) community property. During marriage, disputes about ownership normally only arise when creditors seize property owned by the spouse who has become indebted to them.

When spouses have deferred community property, the assets are subject to a division upon termination regardless of ownership. Questions of ownership are however economically significant upon the termination of the marriage when a spouse has debts that exceed the value of the assets (§ 58 Norwegian Marriage Act) and also in determining the value of assets that can clearly be traced back to means that one spouse had at the time the marriage was contracted (§ 59

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<sup>7</sup> Innst. O. No. 71 (1990-91), p. 14.

para. 1 Norwegian Marriage Act). Disputes may also be caused by the rules governing the allocation of property, i.e. who is to receive particular items of property such as the house, holiday home, etc. (the right of allotment in kind). In such instances, the main rule is that the person who owned the particular item is allowed to keep it after divorce in return for a compensatory payment to the other spouse based on the market value of the property, § 66.

Items of property are frequently co-owned by the spouses – partly due to the fact that co-ownership is established on the basis of the spouses’ indirect contribution in the form of domestic work or the payment of current expenses (§ 31 para. 3 Norwegian Marriage Act). In practice such co-ownership limits the exclusive right of the spouses to dispose of property (§ 31 para. 1 Norwegian Marriage Act).

**6. What is the relationship, if any, between the law regarding the property relationship between spouses and the law of succession?**

The surviving spouse is entitled to the same fraction of the deceased spouse’s estate regardless of which property regime the spouses have chosen (§ 6 Norwegian Inheritance Act). (The size of the decedent’s estate will, of course, vary according to which property regime the spouses have elected.)

There is, however, one direct relationship between the law regarding the property relationship between spouses and the law of succession: Under the deferred community property regime, the surviving spouse has the right to remain in possession of the undivided estate (§ 9 Norwegian Inheritance Act). The surviving spouse has no such right if the spouses have opted out of this default regime and elected a separate property regime. The spouses may, however, by means of a marriage settlement agree that the survivor shall have the right to remain in undivided possession of separate property, or of parts of separate property, according to § 43 Norwegian Marriage Act.

**7. Are there distinct rules concerning general rights and duties of the spouses (as referred to in section B) that are independent of the specific property relationship of the spouses (matrimonial property regimes as referred to in section C)?**

The rules concerning general rights and duties of the spouses (as referred to in section B) are – as the main rule – independent of the specific property relationship of the spouses. During the marriage, the specific property relationship has significance only in two minor cases, e.g. § 34 Norwegian Marriage Act (duration of the limitations on the right of disposal) and § 37 (an allowance to deviate from the limitations by an agreement).

**B. GENERAL RIGHTS AND DUTIES OF SPOUSES CONCERNING HOUSEHOLD EXPENSES, TRANSACTIONS IN RESPECT TO THE MATRIMONIAL HOME AND OTHER MATTERS IRRESPECTIVE OF THE SINGEL MATRIMONIAL PROPERTY REGIME**

**8. What, if any, are the obligations of spouses to contribute to the costs and expenses of the family household? In answering this question, briefly explain what your system understands by “costs and expenses of the family household”.**

According to § 38 Norwegian Marriage Act, 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. A spouse may to a reasonable

extent demand money from the other spouse to cover such expenses. A spouse who does not meet his or her obligation to place the necessary funds at the disposal of the other may be ordered to pay specific amounts. This rule applies irrespective of the property relationship between the spouses.

**9. Is one spouse liable for the household debts incurred by the other? And if so, to what extent?**

As a general rule, a spouse may not contract a debt which affects the other spouse, § 40 Norwegian Marriage Act. In certain cases a spouse has the right to enter into agreements involving the liability of both spouses, and this rule is also irrespective of the property regime. According to § 41, a spouse may, during cohabitation, enter into certain agreements resulting in liability for both spouses. These are: ordinary agreements regarding the daily housekeeping and the upbringing of their children and ordinary agreements to cover the necessary requirements of the individual spouse. This also applies to the leasing of a common residence. Such agreements are considered to be entered into with the liability of both spouses as long as the credit is provided by the other party – and not by a bank or other third party. If the other party (the seller, the lessor etc.) understood or should have understood that the agreement exceeded the right of the spouse, only the said spouse will incur liability. The provisions in § 40 and 41 Norwegian Marriage Act apply irrespective of the property relationship between the spouses.

**10. To what extent, if at all, are there specific rules governing acquisition and/or transactions in respect of the matrimonial/family home irrespective of the matrimonial property regime? In answering this question, briefly explain what your system understands by “matrimonial/family home”.**

Regarding acquisition: According to § 31 para. 3 Norwegian Marriage Act, in assessing who has acquired the matrimonial/family home (and other items of property that are in mutual and personal use) “due consideration shall be given to the work of a spouse in the home”. Indirect contributions in the form of covering more than the spouse’s share of consumption expenses are acknowledged, as well.<sup>8</sup> These rules apply irrespective of the matrimonial property regime.

Regarding transactions: According to § 31 para. 1 Norwegian Marriage Act, a marriage entails no limitation of the right of a spouse to dispose of what he or she owns when the marriage is contracted or later acquires, unless the transactions concern the matrimonial/family home (or ordinary household goods), § 32 (and 33) Norwegian Marriage Act. According to § 32, a spouse may not, without the written consent of the other spouse, transfer (i.e. sell or give away) property that is used as a common residence. Neither may the spouse mortgage, lease out, or enter into or terminate a lease or sublease agreement for such property. Written consent is also necessary if a spouse wants to transfer or mortgage a part, share or bond to which the right to lease a common residence is attached. § 32 Norwegian Marriage Act applies irrespective of the matrimonial property regime. The matrimonial/family home is the common residence of the spouses. The matrimonial/family home is the permanent residence of the spouses - if one of the spouses, for example, is imprisoned, the spouses are still protected by the provision. Normally the spouses can only have one common residence at a time. Even if one of the spouses has permanently moved out of the house, the provision applies until a decision has been made as to what is to be done with the property in the settlement between the spouses. However, if the property items are separate property, the provision ceases to apply after the spouses are separated or divorced, § 34.

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<sup>8</sup> Norwegian Supreme Court Reports 1977, p. 533 and 1979, p. 1436.

If consent is refused or cannot be obtained within a reasonable time, the spouse or the other party to the agreement may demand that the district court decides the question whether the transaction is to be permitted. Permission shall be given if the court finds that there is no reasonable ground for the other spouse to refuse consent. The decision will be made by a court order (§ 32 para. 2 Norwegian Marriage Act).

**11. To what extent, if at all, are there specific rules governing acquisition and/or transactions in respect of household goods irrespective of the matrimonial property regime? In answering this question, briefly explain what your system understands by “household assets”.**

Regarding acquisition: According to § 31 para. 3 Norwegian Marriage Act, in assessing who has acquired items of property that have been used by the spouses in common and personally – including ordinary household goods – “due consideration shall be given to the work of a spouse in the home”. Indirect contributions in the form of covering more than the spouse’s share of consumption expenses are acknowledged, as well.<sup>9</sup> These rules apply irrespective of the matrimonial property regime.

Regarding transactions: According to § 31 para. 1 Norwegian Marriage Act, a marriage entails no limitation of the right of a spouse to dispose of what he or she owns when the marriage is contracted or later acquires, unless the transactions concern, among other things, ordinary household goods, § 33 Norwegian Marriage Act. According to § 33, a spouse may not, without the consent – oral or written – of the other spouse, transfer, lease out or mortgage “ordinary household goods in the common home”. This rule applies irrespective of the matrimonial property regime. “Ordinary household goods” are items of property that are usually kept inside the home, like furniture, household utilities, paintings etc. In determining whether an asset is ordinary or extraordinary, an important consideration is the economic position of the couple in question. Assets that are in fact capital investments, e.g. expensive paintings and antiques, are not covered by this provision. If consent is refused or cannot be obtained within a reasonable time, the spouse or the other party to the agreement may demand that the district court decides the question whether the transaction is to be permitted. Permission shall be given if the court finds that there is no reasonable ground for the other spouse to refuse consent (§ 33 para. 2 Norwegian Marriage Act).

**12. To what extent, if at all, are there other rules governing transactions entered into by one spouse irrespective of the matrimonial property regime (e.g. entering into guarantees, incurring debts...)?**

There are no other rules governing transactions entered into by one spouse irrespective of the matrimonial property regime.

**13. To what extent, if at all, are there specific rules concerning one spouse acting as agent for the other?**

There are no specific rules concerning one spouse acting as agent for the other.

**14. What restrictions or limitations, if any, are there concerning transactions between spouses irrespective of the matrimonial property regime (e.g. gifts...).**

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<sup>9</sup> Norwegian Supreme Court Reports 1977, p. 533 and 1979, p. 1436.



Gifts between spouses must be made by means of a marriage settlement in order to be valid (§ 50 Norwegian Marriage Act). However, this does not apply to gifts that are considered customary, or to gifts consisting of a pension, life insurance, an annuity, a private pension to the former owner of a ceded estate, or similar benefits which provide security for the other spouse.

Furthermore, no valid agreement may be made to the effect that future acquisitions by a spouse shall accrue to the other without compensation. However, such an agreement may be entered into regarding ordinary household goods in the common home, (§ 50 para. 2 Norwegian Marriage Act).

## C. MATRIMONIAL PROPERTY REGIMES

### C.1. General issues

#### 15. Are spouses entitled to make a contract regarding their matrimonial property regime?

Yes, the spouses are entitled to make contracts regarding their matrimonial property regime, according to § 42 to 46 Norwegian Marriage Act.

#### 16. What regime is applicable, using the list below,<sup>10</sup> if spouses have not made a contract (default regime) or are not allowed to make a contract or are not allowed to make a contract with binding effect?

I.	Community of property	Communauté des biens	Gütergemeinschaft
II.	Community of accrued gains/Participation in acquisitions	Participation aux acquêts	Zugewinnngemeinschaft/ Errungenschaftsbeteiligung
III.	Deferred community of property	Communauté différée des biens	Aufgeschobene Gütergemeinschaft
IV.	Separation of property	Séparation de biens	Gütertrennung
V.	Separation of property with distribution by the competent authority	Séparation de biens avec une distribution des biens par l'autorité compétente	Gütertrennung mit behördlicher Vermögensverteilung

III Deferred community of property is applicable if spouses have not made a contract (default regime); § 56 Norwegian Marriage Act.

#### 17. Using the list above, are there other alternative matrimonial property regimes regulated by statute for which spouses can opt besides the default regime (where applicable)?

Spouses may by means of a marriage settlement agree on the separation of property, according to § 42 and 43 Norwegian Marriage Act.

#### 18. Briefly describe the regimes indicated in the answers to:

##### a. Question 16.

<sup>10</sup> For an explanation of this list, see the document: CLASSIFICATION OF MATRIMONIAL PROPERTY REGIMES PROPOSED BY THE CEFL.

The essence of the deferred community property regime in Norway is a system of separation of property during the marriage (§ 31 para. 1 Norwegian Marriage Act), and the division of assets acquired during marriage upon the dissolution of the marriage (Ch. 12 Norwegian Marriage Act, § 77).

Upon divorce the assets of the spouses are divided equally after deductions have been made for debts pursuant to § 58 para. 2 and 3, and after each spouse has withheld from the division the value of assets that can clearly be traced back to means that the 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 or her spouse, § 59 para. 1 (the so-called "unequal division rule" introduced in 1991). A spouse may also withhold from the division certain property and rights which are of a personal nature or which cannot be transferred, according to § 61 Norwegian Marriage Act.

These rules also apply upon death, but in a slightly modified version according to § 77 Norwegian Marriage Act.

**b. Question 17.**

*Separation of property:* According to § 42 Norwegian Marriage Act, spouses may by means of a marriage settlement agree that what they own or later acquire shall be exempted from the division (separate property). Such an agreement may also be entered into in view of a prospective marriage (a pre-nuptial agreement). The agreement may be limited to apply to the assets of one of the spouses or parts of the assets of one (or both) of the spouses. This means that also specific items of property, like a car or a bank account, can be made separate property. The agreement may also be made for a limited period of time or conditional on the spouses not having natural heirs from their marriage. Such an agreement applies upon divorce (separation) and death. Spouses may, however, agree that the separate property regime shall not apply in the case of a settlement after the death of one of the spouses. Such an agreement may be limited to applying only if a particular spouse dies first (§ 42 para. 3 Norwegian Marriage Act).

Spouses may also agree that the survivor shall have the right to remain in undivided possession of separate property, or of parts of separate property, § 43. When the estate ceases to remain undivided, it shall be apportioned in accordance with the value of the separate properties of the spouses at the time the apportionment commences, if the marriage settlement does not provide for a more equal distribution of the assets, § 26, para. 2 Norwegian Inheritance Act. (If the estate is divided between the heirs and the surviving spouse, the spouse is entitled to inherit in addition to his or her own part.)

A spouse who has been instrumental in increasing the means of the other spouse that are separate property may, however, be awarded compensation. According to § 73 Norwegian Marriage Act, if a spouse by contributing to the support of the family, by working or in some other way has significantly helped to increase means that are the separate property of the other spouse, he or she may be awarded compensation from the other spouse. When there are strong reasons for doing so, a spouse may also obtain ownership of the common residence which is the separate property of the other spouse. In these cases the market value of the house must be paid to the owner (§ 74 Norwegian Marriage Act).

**19. Indicate the frequency of the use made of the regimes (where possible by reference to statistical data) referred to in Questions 16 and 17.**

Approximately 23,500 couples married in Norway in 2007 (<http://www.ssb.no/ekteskap/>) and the great majority of these couples choose the default regime (deferred community property - Question 16).

The yearly number of nuptial agreements registered in the Register of Marriage Settlements is around 3500. Agreements regarding an exemption from division constitute approx. 85 % of the total number of agreements (separation of property regime - Question 17); § 42 Norwegian Marriage Act. This information was obtained from the Brønnøysund Register Centre.

In addition to the registered agreements, an unknown number of unregistered nuptial agreements are in existence, as a nuptial agreement is binding for the spouses and heirs of the spouses without registration (§ 54 para. 3 Norwegian Marriage Act). In order that the agreement shall be legally protected against the creditors of the spouses, it must be judicially registered. It seems reasonable to believe that the majority of nuptial agreements are registered.

## C.2. Specific regimes

### I. Community of property

Not relevant.

### II. Community of accrued gains/Participation in acquisitions

Not relevant.

## C.2. Specific regimes

### III. Deferred community

#### III.1 Categories of assets

##### 91. Describe the system. Indicate the different categories of assets involved.

Deferred community property in Norway is a system where spouses own their property separately during marriage (§ 31 para. 1 Norwegian Marriage Act), and divide equally assets that are acquired during marriage upon divorce/separation or death (Ch. 12 Norwegian the Marriage Act, § 77).

The Norwegian term for deferred community is "felleseie", which directly translated means "community property". Thus the concept "community property" is often used in translated texts, e.g. the English translation of the Norwegian Marriage Act. In Norwegian one does not use an equivalent to the word "deferred", as there is no reason to distinguish this community property regime from any other concept of community property.

The system of separate spheres of property during marriage is reflected in the general rule in § 31 para. 1: "Marriage entails no limitation of the right of a spouse to dispose of what he or she owns when the marriage is contracted or later acquires,...", and in § 40: "A spouse may not contract a debt which affects the other spouse,."

Upon the dissolution of the marital property regime, the assets of the spouses are divided equally after each spouse has withheld from the division the value of assets that can clearly be traced

back to means that the 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 or her spouse, § 59 para. 1 Norwegian Marriage Act (the so-called “unequal division rule” introduced in 1991). A spouse may also withhold from the division property and rights which cannot be transferred or are of a personal nature, e.g. pension rights, according to § 61, and after deductions have been made for debts pursuant to § 58 para. 2 and Norwegian Marriage Act.

If the right to withhold assets which can be traced back to premarital assets, gifts or an inheritance (§ 59 para. 1 Norwegian Marriage Act) will lead to an “obviously unfair result”, it may be set aside entirely or partly (59 para. 2 Norwegian Marriage Act). On the other hand, a spouse may be awarded the right to withhold from the division all or part of the assets that are acquired during the marriage, if there are “strong reasons” for doing so (§ 59 para. 3 Norwegian Marriage Act).

Summing up: Under the default system – the deferred community property regime – all assets are categorised as deferred community property. Within this category there are two spheres of property, as each spouse owns his or her (deferred) community property separately during marriage. The “community nature” of the property only appears when the property regime is dissolved and the assets are subject to division. Upon dissolution two sub-categories of property can be identified within each of the spouses’ deferred community property: assets which are withheld from the division pursuant to § 59 (premarital assets, gifts and inheritances) and assets which are withheld from the division pursuant to § 61 (non-transferable assets and personal assets). Furthermore, assets may be withheld from the division to cover a debt that each spouse has incurred, pursuant to § 58 para. 2 and 3 Norwegian Marriage Act. If a spouse has more debts than assets the net value of his or her deferred community property is nil – a spouse cannot bring a negative number into the total. After each spouse has withheld these assets from his or her deferred community property, the assets are divided equally pursuant to § 58 para. 1 Norwegian Marriage Act.

Compensation upon divorce/separation may be awarded in special cases. If a spouse during the marriage has used his or her deferred community property that otherwise would be subject to division to increase the value of assets that are his or her separate property, or to acquire non-transferable assets or personal assets exempted from the division pursuant to § 61 (c), the other spouse may claim compensation. The same applies to the acquisition of pension and insurance rights specified in § 61 (b), in so far as the expenses exceed what must be considered reasonable (§ 63 para. 1 Norwegian Marriage Act). Compensation may also be claimed when a spouse has in an improper manner significantly diminished the basic estate to be divided, (§ 63 para. 2 Norwegian Marriage Act). Payment may also be claimed according to § 61 (b) and (c) even if no deferred community property is used to acquire assets.

Upon death a similar division takes place. The assets of the spouses are divided between the surviving spouse and the heirs of the deceased, unless the surviving spouse makes use of the right to remain in possession of the undivided estate, § 9 of the Inheritance Act. According to § 76 and 77, if the assets of the spouses are to be divided between the surviving spouse and the heirs of the deceased, the provisions of Ch. 12 Norwegian Marriage Act concerning divorce (§ 56 to 65) will apply. However, the heirs of the deceased spouse may not present claims pursuant to § 61 and compensation pursuant to § 63. Furthermore, upon the distribution of an undivided estate, an unequal division pursuant to § 59 may not be demanded by either of the parties.

## **92. What is the legal nature of the different categories of assets?**

Under the default system – deferred community property – all assets are categorised as deferred community property. In Norwegian the term “felleseie” – which means “community property” – is used. This term is somewhat misleading, as the “community nature” of the property only appears upon the dissolution of the property regime. During marriage there are two spheres of property as each spouse owns his or her (deferred) community property separately. And even upon the dissolution of the marriage, far from all assets are subject to division. Upon dissolution two sub-categories can be identified within each of the spouses’ deferred community property: assets which are withheld from the division pursuant to § 59 Norwegian Marriage Act (premarital assets, gifts and inheritances) and assets which are withheld from the division pursuant to § 61 Norwegian Marriage Act (non-transferable assets and personal assets).

In Norwegian marriage law there are two main categories of property: deferred community property (felleseie) and separate property (særeie). All assets are either categorised as deferred community or as separate property. If the property is separate, no division takes place upon dissolution, and such an arrangement has to be agreed upon by the spouses by means of a marriage settlement (a nuptial agreement), § 42 Norwegian Marriage Act. A donor or testator may also provide that the legacy or gift shall be separate property (§ 48 Norwegian Marriage Act). During the marriage the legal nature of deferred community assets and separate assets are the same.

### **93. What assets are categorised as marital property?**

Under the deferred community property regime, the concept of marital property does not exist. (However, as the value of assets which 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, are exempted from the division, § 59 para. 1 Norwegian Marriage Act, one could have categorised *assets acquired during marriage* as “marital” property.)

### **94. What assets are categorised as separate property?**

Under the deferred community property regime, the concept of separate property does not exist. “Separate property” is used when the spouses have opted out of the default regime and agreed through a nuptial agreement that the assets shall be exempted from division, or such an arrangement is provided for by a donor or testator. However, as 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, is exempted from the division under the deferred community property regime, § 59 para. 1, one *could have* categorised such assets as separate property. There are, however, a few legal differences between the two categories. Most importantly, under the deferred community property regime, the surviving spouse has the right to remain in possession of the undivided estate (§. 9 Norwegian Inheritance Act). The surviving spouse has no such right if the spouses have chosen a separate property regime, unless the spouses have agreed upon such an arrangement pursuant to § 43 Norwegian Marriage Act.

### **95. What assets are categorised as personal property?**

During marriage no assets are categorised as personal property, but upon dissolution, a spouse may withhold from the division items of property that are meant for the exclusive personal use of the spouse, e.g. clothing and jewellery, unless it would be obviously unfair to withhold the said items, § 61 (a) Norwegian Marriage Act. This provision is limited to items for “personal” use – property used professionally is thus subject to division. A spouse may also withhold family photographs and family papers which derive from his or her relatives.

Other items that are of a personal nature, e.g. unpublished manuscripts or prizes with inscriptions, may also be withheld from the division (§ 61 (c) Norwegian Marriage Act). If the fact that one spouse withholds such assets causes the other spouse to be placed in an unfairly adverse position, the latter may be awarded a sum to prevent this. When assessing whether compensation shall be awarded, an important consideration is the duration of the marriage. It may be decided that the sum shall be paid in instalments.

According to these rules the spouse is given both the right to withhold the value of the assets from the division and to keep the actual item of property (allotment in kind).

#### **96. Can spouses acquire assets jointly? If so, what rules apply?**

Yes, the spouses can acquire assets jointly. According to § 31 para. 2 Norwegian Marriage Act items of property acquired by both spouses are owned by both spouses (co-ownership) and the general 1965 Act relating to Co-ownership applies to such items of property. Even though each spouse owns his or her property separately during marriage, § 31 para. 1 Norwegian Marriage Act, the particular items of property are often co-owned by the spouses. At the time the previous Marriage Act 1927 was being drafted, it was not an issue that ownership should be decided on the basis of the general principles of property law relating to ownership, e.g., that the spouse who had paid for an item of property would normally own it, or that the spouses could regulate ownership contractually. Gradually, however, cases were brought to court where a wife had contributed to her husband's acquisition of property, often the family home. If the wife had made a direct financial contribution to the purchase price, there was normally no problem. The view then taken was that the spouses had made a tacit agreement to the effect that they should both be owners, even though the husband formally appeared to be the owner. But, after a while, cases were brought to court where the wife had made only an indirect contribution, in the form of child care, housework and/or by covering the family's current expenditures on food, clothing, etc. In 1975, the Norwegian Supreme Court acknowledged an indirect contribution in the form of child care and housework. According to the Court's decision a wife who stays at home and cares for small children may become the co-owner of the house purchased during the marriage by her husband solely with his income earned during the marriage.<sup>11</sup> The house in question was acquired during the marriage and the husband held the title. Even if the spouses had agreed through a nuptial agreement to a separate property regime, this rule relating to the acquisition of property was applied, as long as the spouses had not agreed upon who was to be deemed the owner of the particular items of property.<sup>12</sup> The Norwegian Supreme Court has also determined that creditors must respect co-ownership rights of this nature.<sup>13</sup>

This rule was partly codified in the Marriage Act 1991, § 31, para. 3: "In assessing who has acquired items of property that have been used by the spouses in common and personally, such as a common residence or ordinary household goods, due consideration shall be given to the work of a spouse in the home." This rule covers not only the common residence, but also other items of property for mutual and personal use, e.g. a second home, a car or a boat. The rule applies unless the spouses have expressly agreed upon who is to be considered the owner. Indirect contributions in the form of covering the family's current expenditures are acknowledged as well.<sup>14</sup>

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<sup>11</sup> Norwegian Supreme Court Reports 1975, p. 220.

<sup>12</sup> Norwegian Supreme Court Reports 1980, p. 1403 and 1982 p. 1269.

<sup>13</sup> Norwegian Supreme Court Reports 1978, p. 871.

<sup>14</sup> Norwegian Supreme Court Reports 1977, p. 533 and 1979, p. 1436

As long as the spouses have not agreed upon who is to be deemed the owner of the particular items of property, co-ownership is based on what the parties contributed to the acquisition of the property. A homemaker's indirect contributions in the form of care for small children are sufficient in the majority of cases to make her an equal co-owner of the common residence or other items of mutual and personal use bought by the husband with his income earned during the same period of time. If the children are of compulsory school age and the wife still works full-time at home, her work will normally contribute to less. However, in modern marriages, women assume paid work after a shorter period at home, and they will therefore normally contribute on an equal footing in these cases as well.

The fundamental thinking appears to be that if they had performed equal shares of work within the home, the husband would have had to reduce his working hours – and earned less. In the “Housewife Case,” discussed above, the husband, in addition to carrying out the work from which he derived his income, had built a part of the house himself in his spare time. The judge who drafted the decision stated that it was the wife's housework and her caring for three small children “that has enabled the husband to devote so much work to building”.<sup>15</sup> The legislative history of the new Marriage Act 1991 states likewise that the homemaker's co-ownership is based on “economic realities” and emphasises that no transfer of property occurs by declaring that the wife is a co-owner. The same text also states that “co-ownership is based on the contribution from each of the spouses that lies behind the acquisition.”<sup>16</sup>

**97. Is substitution of assets (e.g. barter agreement) governed by specific rules? Distinguish where necessary between movables and immovables.**

Under the deferred community property regime, 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, is exempted from division (§ 59 para. 1 Norwegian Marriage Act). Thus, any asset that is substituted for premarital assets, inheritances or gifts is also exempted from division.

The same applies to compensation or insurance which covers the loss of future income etc. According to § 61 (d) Norwegian Marriage Act, the intact value of such benefits may also be exempted from division. Thus, as long as the benefits are not expended, a spouse may withhold such assets from division. However, if it is due to the efforts of the other spouse that the benefits have not been expended, the amount that may be withheld from the division shall be reduced to an extent that is fair when the value of the efforts of the other spouse is taken into account.

If a spouse has property that is separate – this requires a marriage settlement or provision by a donor or testator – the substitution of assets is governed by § 49 Norwegian Marriage Act, which states that any substitution for property that is separate property, becomes separate property unless otherwise provided by the spouses by means of a marriage settlement, or stipulated by the donor or testator.

**98. What is the position of pension rights and claims and insurance rights?**

According to § 61 (b) Norwegian Marriage Act, a spouse may withhold all pension rights (public or private) from division. The same applies to claims arising from an annuity or life insurance which has no surrender value that may be realized by the spouse or the spouses jointly. If the fact that a spouse withholds assets causes the other spouse to be placed in an unfairly adverse

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<sup>15</sup> Norwegian Supreme Court Reports 1975, p. 220, at p. 226.

<sup>16</sup> NOU (Official Norwegian Report) 1987:30, p. 70-71.

position, the latter may be awarded a sum to prevent this. When assessing whether compensation shall be awarded, an important consideration is whether the marriage has lasted for a long time. It may be decided that the sum shall be paid in instalments. This rule is rarely used in practice.

**99. Can a third party stipulate in e.g. a gift or a will to what category of assets a gift or bequest will belong?**

A donor or testator may provide that the legacy or gift shall be separate property, and likewise, that the legacy or gift shall be divided equally (instead of being exempted from division pursuant to the default rule in § 59). According to § 48 Norwegian Marriage Act a donor or testator may provide that the legacy or gift shall be conditional on such an arrangement as is mentioned in § 42 to 44 Norwegian Marriage Act, e.g.. the same arrangements that spouses can agree upon by means of a marriage settlement. For a legacy this must be provided by a will. The beneficiary may not alter such provisions unless this has been specially authorized or clearly implied by the donor or testator.

**100. How is the ownership of the assets proved as between the spouses? Are there rebuttable presumptions?**

In Norway, ownership is obtained regardless of title, and a legally enforceable agreement relating to land does not have to be in writing, although this is normally the case. Title can, however, together with other factors serve as proof of an agreement, but title in itself is not sufficient proof, cf. Norwegian Supreme Court Reports 1980, p. 1403. As long as the spouses have not agreed (expressly) upon who is to be deemed the owner of the particular items of property, co-ownership is based on what the parties contributed to the acquisition of the property. If both spouses have made a direct financial contribution to the purchase price of an item of property for mutual personal use, there is a presumption that the spouses have made a tacit agreement of co-ownership even if one of the spouses is the actual buyer. This presumption is rebuttable – specific circumstances might suggest that the financial contribution was a gift or a loan. Not only direct, but also indirect contributions are acknowledged, § 31 para. 3 Norwegian Marriage Act. Indirect contributions in the form of covering the family's current expenditures are acknowledged as well. No specific presumption applies in this assessment. Assuming the conclusion is co-ownership, the spouses own an equal part unless circumstances justify a different fraction of ownership (§ 2 Norwegian Co-ownership Act 1965).

**101. How is the ownership of the assets proved as against third parties? Are there rebuttable presumptions?**

If the debtor is married, his or her creditor may seize half of the common residence if it is acquired during the marriage, provided no other ownership is proved, according to § 7-13 para. 3 first sentence of the Norwegian Act relating to enforcement of claims 1992. This presumption is easily rebutted.<sup>17</sup>

Against the creditors, title is not in itself sufficient proof that one of the spouses is the single owner. This rule regarding the weighing of evidence is codified in § 7-13 para. 3 second sentence of the Norwegian Act relating to enforcement of claims 1992.

**102. Which debts are personal debts?**

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<sup>17</sup> Norwegian Supreme Court Reports 1999, p. 199.



The spouses have separate spheres of property during marriage, and this system of separate spheres of property is reflected in the general rule regarding the liability of spouses for debts in § 40 Norwegian Marriage Act, which states that a spouse may not contract a debt which affects the other spouse. In certain cases, however, a spouse has the right to enter into agreements resulting in the liability of both spouses (§ 41 Norwegian Marriage Act). A spouse may, during cohabitation, with liability for both spouses enter into ordinary agreements regarding the daily housekeeping and the upbringing of their children etc. These rules are irrespective of the matrimonial property regime.

**103. Can spouses have joint debts? If so, on what conditions?**

The spouses may have joint debts if they have both contracted the debt (§ 40 Norwegian Marriage Act). In certain cases, however, a spouse has the right to enter into agreements involving the liability of both spouses (§ 41 Norwegian Marriage Act). A spouse may, during cohabitation, with liability for both spouses enter into ordinary agreements regarding the daily housekeeping and the upbringing of their children and ordinary agreements to cover the necessary requirements of the individual spouse. This also applies to the leasing of a common residence. Such agreements are considered to be entered into on the liability of both spouses, as long as the credit is provided by the other party – and not by a bank or other third party. If the other party (the seller, the lessor etc.) understood or should have understood that the agreement exceeded the right of the spouse, only the said spouse will incur liability. These rules are irrespective of the matrimonial property regime.

**104. On which assets can the creditor recover personal debts?**

The creditor can recover personal debts from all assets that belong to the debtor spouse, regardless of whether the assets are deferred community property (*felleseie*) or separate property (*særeie*).

**105. If there are joint debts, on which assets can the creditor recover them?**

The creditor can recover joint debts (solidary obligations) from all assets that belong to either of the two debtor spouses, regardless of whether the assets are deferred community property or separate property.

**III.2 Administration of assets**

**106. How are the different categories of assets administered?**

During marriage all assets are categorised as deferred community property – either spouse A's (deferred) community property or spouse B's (deferred) community property. Each spouse owns his or her property separately – even though the assets are (somewhat misleadingly) called “community property” (*felleseie*). This system is reflected in § 31 para. 1 Norwegian Marriage Act, which states that marriage entails no limitation of the right of a spouse to dispose of what he or she owns when the marriage is contracted or later acquires, unless the transactions concern the common residence or ordinary household goods (§ 32 and 33 Norwegian Marriage Act). In the latter cases the disposal of the said items of property requires the consent of the other spouse.

**107. Can one spouse mandate the other to administer the assets?**

One spouse can authorise the other to administer specific items of property in accordance with the general law of agency.

**108. Are there important acts concerning assets (e.g. significant gifts, disposal of the matrimonial/family home or other immovable property) that require the consent of the other spouse? Is the categorisation of the property as separate or as marital property of relevance in this respect?**

According to § 32, a spouse may not, without the written consent of the other spouse, transfer (i.e. sell or give away) a property that is used as a common residence. Neither may the spouse mortgage, lease out, or enter into or terminate a lease or sublease agreement for such property. A written consent is also necessary if a spouse wants to transfer or mortgage a part, share or bond to which the right to lease a common residence is attached. The matrimonial/family home is the common residence of the spouses. The common residence is the permanent residence of the spouses - if one of the spouses, for example, is imprisoned, the spouses are still protected by the provision. Normally the spouses can only have one common residence at a time.

According to § 33 Norwegian Marriage Act, a spouse may not, without the consent - oral or written - of the other spouse, transfer, lease out or mortgage "ordinary household goods in the common home". "Ordinary household goods" refer to items of property that are usually kept inside a home, like furniture, household utilities, paintings etc. In determining whether an asset is ordinary or extraordinary, an important consideration is the economic position of the couple in question. Assets that are in fact capital investments, e.g. expensive paintings and antiques, are not covered by this provision.

§ 32 and 33 apply irrespective of the matrimonial property regime, and they apply until a decision has been made as to what is to be done with the property in the settlement between the spouses. However, if the items of property are separate property, the provision ceases to apply after the spouses are separated or divorced (§ 34 Norwegian Marriage Act).

If consent is refused or cannot be obtained within a reasonable time, the spouse or the other party to the agreement may demand that the district court decides the question whether the transaction is to be permitted. Permission shall be given if the court finds that there is no reasonable ground for the other spouse to refuse consent, (§ 32 para. 2 and § 33 para. 2 Norwegian Marriage Act).

**109. Are there special rules for the administration of professional assets?**

There are no special rules for the administration of professional assets.

**110. Is there a duty for one spouse to provide information to the other about the administration of the assets?**

Spouses are under an obligation to give each other the information which is necessary to assess their financial position. For this purpose a spouse may demand that the other spouse and the tax assessment authorities provide information regarding the joint tax return and tax assessment or the tax return and tax assessment of the other spouse. A spouse may also demand information from companies, enterprises or other institutions engaged in financing or insurance activities, and from others who manage funds (§ 39 Norwegian Marriage Act).

**111. How are conflicts between the spouses concerning the administration of assets resolved? Do they have access to a conflict resolution mechanism?**

Conflicts between the spouses concerning the administration of assets must be resolved according to general principles of law. There are no special rules in the Marriage Act that deal with such conflicts during the marriage.

**112. What are the possible consequences when a spouse violates the rules governing the administration of assets? What are the possible consequences in other cases of maladministration of the assets?**

Since marriage as the main rule entails no limitation of the right of a spouse to dispose of what he or she owns, § 31 para. 1 Norwegian Marriage Act, a spouse has no right to dispose of property that belongs to the other spouse. A violation of this rule could be a criminal offence.

If a spouse has acted contrary to § 32 or § 33 (disposal without consent), the other spouse may demand that the agreement be rescinded by a court judgment. An agreement that is covered by § 33 (household goods) may not however be rescinded if the other party at the time of delivery had reasonable grounds to believe that the spouse had the right to contract the agreement. Proceedings must be instituted within six months after the spouse has received information of the agreement, and not later than one year after the judicial registration of title if the agreement concerns real property, or after delivery if it concerns other items of property (§ 35 Norwegian Marriage Act).

If a spouse has mismanaged his or her financial affairs so as to entail a serious risk that the family will lose the family home, the other spouse may demand a division of the assets of the spouses which are deferred community property (§ 57 c Norwegian Marriage Act).

Upon the dissolution of the marriage, if a spouse has, in an improper manner, significantly diminished the assets to be divided, the other may claim compensation (§ 63 para. 2 Norwegian Marriage Act). In considering the matter, importance could be attached, among other things, to whether the spouse has provided information to the other about the administration of the assets during the marriage.<sup>18</sup>

**113. What are the possible consequences if a spouse is incapable of administering the assets?**

If a spouse is incapable of administering his or her assets, the general law of guardianship will apply. Often a provisional guardian will be appointed pursuant to § 90 a et seq. Norwegian Guardianship Act.

**III.3 Distribution of property upon dissolution**

**114. What are the grounds for the dissolution of the matrimonial property regime, e.g. change of property regime, separation, death of a spouse or divorce?**

The grounds for the dissolution of the deferred community property regime are:

1. a change of property regime to a separation of property (§ 42 and 43 Norwegian Marriage Act).
2. separation and divorce (§ 57 (a) Norwegian Marriage Act).
3. agreement in a marriage settlement that the division shall take place (§ 57 (b) Norwegian Marriage Act)

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<sup>18</sup> Norwegian Supreme Court Reports 2002, p. 648.

4. the mismanagement of financial affairs entailing a serious risk that the family will lose the family home (§ 57 (c) Norwegian Marriage Act)
5. the marriage is invalid or shall be dissolved due to bigamy etc. (§ 57 (d) and (e) Norwegian Marriage Act)
6. death (§ 76 and 77 Norwegian Marriage Act).

**115. What date is decisive for the dissolution of the matrimonial property regime? Distinguish between the different grounds mentioned under Q 114.**

The decisive dates for the dissolution of the deferred community property regime are (numbers referring to the numbers under Q 114):

1. when the spouses agree to change the property regime to separate property.
2. when a petition for separation or divorce was received by the county governor or a writ demanding separation or divorce was received by the court, or when cohabitation ceased if this took place first (§ 60 para. 1 (a) Norwegian Marriage Act).
3. when the spouses agree to the division pursuant to § 57 (b), § 60 para. 1 (b). Norwegian Marriage Act.
4. when a demand for a division pursuant to § 57 (c) was received by the court, § 60 para. 1 (c) Norwegian Marriage Act.
5. when a writ with a demand specified in § 57, para. 1, (d) or (e), was received by the court (§ 60 para. 1 (d) Norwegian Marriage Act).
6. the time of death.

The division includes assets which each spouse had at these cut-off dates, and a spouse may not claim a deduction for debts incurred after the cut-off dates. Income from assets owned wholly or partly by a spouse, earned after the cut-off dates, shall not be divided, § 60 Norwegian Marriage Act.

**116. Upon dissolution of the matrimonial property regime which assets belong to the deferred community? How are those assets valued? Can, and if so on what conditions, any property belonging to the deferred community be withheld from the property division?**

Under the default system – deferred community property – all assets belong to the deferred community property. (Separate property has to be agreed upon by the spouses by means of a marriage settlement, § 42 Norwegian Marriage Act. A donor or testator may also provide that the legacy or gift shall be separate property, § 48 Norwegian Marriage Act).

If the spouses are unable to agree on the value of certain items of property, the value shall be determined by means of a probate valuation. The valuation shall correspond to the market value of the items of property unless otherwise specially provided, § 69 para. 1 Norwegian Marriage Act and § 125 Norwegian Probate Act.

Two sub-categories of property may be withheld from each of the spouses' deferred community property:

1. Assets which are withheld from the division pursuant to § 59 Norwegian Marriage Act (premarital assets, gifts and inheritance)

Upon divorce the assets of the spouses are divided equally after each spouse has withheld from the division the value of assets that can clearly be traced back to means that the 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 or her spouse, § 59 para. 1 Norwegian Marriage Act the so-called “unequal division rule” introduced in 1991).

If the right to withhold assets that can be traced back to premarital assets, gifts or inheritance (§ 59 para. 1 Norwegian Marriage Act) will lead to an obviously unfair result, it may be set aside entirely or partly (§ 59 para. 2 Norwegian Marriage Act). On the other hand, a spouse may be awarded the right to withhold from the division all or part of the assets that are acquired during the marriage, if there are strong reasons for doing so (§ 59 para. 3 Norwegian Marriage Act).

## 2. Assets which are withheld from the division pursuant to § 61 Norwegian Marriage Act (non-transferable and/or personal assets)

A spouse may withhold from the division items of property that are meant for the exclusive personal use of the spouse, e.g. clothing, unless this would be obviously unfair under the circumstances (§ 61 (a) Norwegian Marriage Act). This provision is limited to items for “personal” use – items of property used in the professional work of a spouse are subject to division. A spouse may also withhold family photographs and family papers which derive from his or her relatives.

According to § 61 (b) Norwegian Marriage Act, a spouse may withhold all pension rights (public or private) from division. The same applies to claims arising from an annuity or life insurance which has no surrender value that may be realized by the spouse or the spouses jointly. In other words, if the insurance rights cannot be converted into liquid funds at the time of the division, the rights are withheld from division. If withholding such assets causes the other spouse to be placed in an unfairly adverse position, the latter may be awarded a sum to prevent this. When assessing whether compensation shall be awarded, an important consideration is whether the marriage has lasted for a long time. It may be decided that the sum shall be paid in instalments. This compensation rule is rarely used in practice.

Other items that are non-transferable or of a personal nature, e.g. unpublished manuscripts or prizes with inscriptions, may also be withheld from division, § 61 (c) Norwegian Marriage Act. If the fact that one spouse withholds assets causes the other spouse to be placed in an unfairly adverse position, the latter may be awarded a sum to prevent this. When assessing whether compensation shall be awarded, an important consideration is whether the marriage has lasted for a long time. It may be decided that the sum shall be paid in instalments. This compensation rule is rarely used in practice.

According to § 61 (d) Norwegian Marriage Act, the intact value of compensation, national insurance or insurance which covers the loss of future income and expenses which a personal injury may be assumed to cause an injured person in the future etc., can be withheld from division. Payments from an employer in connection with being laid off or being forced to take early retirement may be withheld on the same conditions. However, if it is due to the efforts of the other spouse that the benefits have not been expended, the amount that may be withheld from the division shall be reduced to an extent that is fair when the value of the efforts of the other spouse is taken into account.

Items of property that have been acquired solely for use by the children may also be withheld from the division (§ 61 (e) Norwegian Marriage Act). The spouse awarded responsibility for the daily care of the children may demand that such items of property be withheld.

According to § 61 (a), (c) and (e) Norwegian Marriage Act the spouse is given both the right to withhold the value of the assets from the division and to keep the actual item of property.

Furthermore, assets can be withheld from the division to *cover a debt that each spouse* has incurred pursuant to § 58 Norwegian Marriage Act. A spouse who only has assets that are deferred community property, and who does not withhold means from the division pursuant to § 59, may deduct the debt *in full* from his or her property meant for division (§ 58 para. 2 Norwegian Marriage Act). If the spouses are jointly liable for such debts (solidarity liability), each of them may deduct his or her internal share of the debt (§ 58 para. 1 last sentence Norwegian Marriage Act).

According to § 58 para. 3, a spouse who has separate property, or who withholds means from the division pursuant to § 59, may claim a full deduction for debts that the spouse has incurred through the acquisition of, or expenditure on, items of property which are deferred community property, unless the spouse has incurred the debt through the acquisition of, or expenditure on, items of property which are withheld from the division pursuant to § 59, or has incurred the debt through the acquisition of, or expenditure on, items of property which are exempted from division pursuant to § 61 (b) or (c), or through improper conduct towards the other spouse. If the total value of the separate property owned by the spouse and the means withheld from division pursuant to § 59 are not sufficient to cover the debts, a deduction may still be claimed. A spouse who has separate property, or who withholds means from the division pursuant to § 59, may not claim a deduction for debts that the spouse has incurred through the acquisition of, or expenditure on, items of property which are separate property, unless the total value of the separate property owned by the spouse and the means withheld from the division pursuant to § 59 are not sufficient to cover the debts (§ 58 para. 3 (a) and (b) Norwegian Marriage Act). For consumer debts deductions may be claimed for a proportionate share, determined by the size of the assets subject to division compared to the size of the assets that are not subject to division (§ 58 para. 3 (c) Norwegian Marriage Act). If the spouses are jointly liable (solidarity liability) for debts which can be withheld pursuant to § 58 para. 3 (a), (b) or (c), each of them may deduct his or her internal share of the debt (§ 58 para. 1 last sentence Norwegian Marriage Act).

After each spouse has withheld assets from his or her deferred community property, the total assets are divided equally pursuant to § 58 para. 1. (If a spouse has more debts than assets the net value of his or her deferred community property is nil – a spouse cannot bring a negative number into the total.)

**117. What are the relevant dates for the determination and valuation of assets? E.g. is the fact that the spouses are living apart before the dissolution of the marriage relevant?**

1. Dates for the determination of assets:

The division includes all assets owned by a spouse when the petition for separation or divorce was received by the county governor or a writ demanding separation or divorce was received by the court, or when cohabitation ceased if this took place first (§ 60 para. 1 (a) Norwegian Marriage Act). Other less frequently used cut-off dates (invalid marriages etc.) are mentioned in § 60 para. 1 (b) to (d). Income from assets owned wholly or partly by a spouse earned after this cut-off date is not to be divided, and a spouse may not claim a deduction for debts incurred after the same cut-off date (§ 60 para. 2 and 3 Norwegian Marriage Act).

2. Dates for the valuation of assets:

When a spouse retains items of property that are wholly owned by him or her, the valuation shall be based on the value at the time stated in § 60 Norwegian Marriage Act. (According to § 60, a division is to be made of the assets each spouse owned when the petition for separation or divorce was received, or when cohabitation ceased if this took place first.) In other cases the valuation in a public administration of the estate shall be based on the value at the time of

allocation, and in a private administration of the estate on the value at the time when it was decided who should take over the item of property (§ 69 para. 2 Norwegian Marriage Act).

**118. What happens if assets belonging to one category have been used for investments in the assets belonging to another category? Is there any right to compensation? If so is this a nominal compensation or is it based on the accrual in value?**

If a spouse during the marriage has used deferred community property that otherwise would be subject to the division for investments in his or her own separate property and increased the value of the assets, or similarly to acquire non-transferable assets or personal assets that are exempted from division pursuant to § 61 (c), the other spouse may claim compensation. The compensation should place the spouse in the same financial position as if the investment not had taken place. The compensation is nominal, but could probably be adjusted to take account of inflation.

If a spouse during the marriage has used deferred community property that otherwise would be subject to the division to acquire pension and insurance rights specified in § 61 (b), in so far as the expenses exceed what must be considered as reasonable, [see 63 first paragraph](#).

**119. What happens if assets belonging to one category have been used for payment of debts belonging to another category of assets? Is there a rule of compensation? And if so, how is compensation calculated?**

If a spouse during the marriage has used his or her deferred community property that otherwise would be subject to the division to pay off debts relating to separate property and thus to increase the net value of these assets, or similarly on non-transferable or personal assets that are exempted from the division pursuant to § 61 (c), the other spouse may claim compensation. The compensation should place the spouse in the same financial position as if the investment not had taken place. The compensation is nominal, but could probably be adjusted to take account of inflation.

If a spouse during the marriage has used deferred community property that otherwise would be subject to the division to pay off debts relating to pension and insurance rights specified in § 61 (b), the other spouse may claim compensation to the extent that the expenses exceed what may be considered as reasonable, [see 63 first paragraph](#).

**120. How are assets administered after dissolution of the matrimonial property regime but before allocation? Can a spouse's rights in relation to the division of property be protected against transactions by the other spouse? If so, how?**

The fact that the assets of the spouses are to be divided has no effect on the administration of the assets, as there are two spheres of property during marriage – the two spouses administer their own property as before the dissolution of the property regime. The decisive dates for the dissolution of the deferred community property regime are the cut-off dates mentioned § 60. (According to § 60, a division is to be made of the assets each spouse owned when the petition for separation or divorce was received, or when cohabitation ceased if this took place first). A division is to be made of the assets each spouse had at these cut-off dates, and a spouse may not claim a deduction for debts incurred after the cut-off dates. Income from assets owned wholly or partly by a spouse which is earned after the cut-off dates shall not be divided. How the assets are administered after the dissolution of the deferred community property regime is therefore of no legal relevance to the other spouse. The spouse's ability to fulfil his or her payments may

diminish due to mismanagement after the dissolution, but the Marriage Act contains no provisions aimed at protecting against such transactions. The fact that the assets of the spouses are to be divided has no effect on the right of creditors to recover their claim against a spouse. Regarding debts that a spouse has incurred after dissolution, however, creditors have no right to attach assets that are to be divided (§ 72 Norwegian Marriage Act).

**121. Briefly explain the general rules governing the division of the assets. Explain who may carry out the division (spouses/competent authority) and what means are available when a spouse refuses to cooperate in the division?**

Upon divorce the assets of the spouses are divided equally after each spouse has withheld from the division the value of assets that can clearly be traced back to means that the 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 or her spouse, § 59 para. 1 Norwegian Marriage Act (the so-called “unequal division rule” introduced in 1991). A spouse may also withhold from the division property and rights which cannot be transferred or are of a personal nature, e.g. pension rights, according to § 61 Norwegian Marriage Act, and after deductions have been made for debts pursuant to § 58 para. 2 and 3 Norwegian Marriage Act.

If the value of the items of property that a spouse takes over exceeds the share to which the said spouse is entitled, he or she must pay the other spouse the excess amount (§ 70 para. 1 Norwegian Marriage Act).

The spouses can choose a public or a private administration of the marital estate. Most couples choose private administration – often with the help of lawyers, as public administration is costly. Public administration is conducted by the district court, see Ch. 8 of the Norwegian Probate Act 1930. The district court administers meeting(s) between spouses (and heirs) and keeps accounts of the parties’ assets and liabilities, which indicate how the division of the estate shall be accomplished.

The provisions of the Marriage Act do not prevent the spouses from entering into an agreement regarding the division of assets at the time of divorce (or separation), (§ 65 Norwegian Marriage Act).

A spouse may always demand the public administration of the marital estate, § 53 Norwegian Probate Act. Such a demand is the appropriate remedy when the other spouse refuses to cooperate in the division.

**122. How are the assets allocated?**

The rules governing who is to receive particular items of property (the right of allotment in kind) are found in Ch. 13 Norwegian Marriage Act.

As the main rule each of the spouses may demand that items of property that are not taken over by them be sold (§ 71 para. 1 Norwegian Marriage Act). (Private letters and other items of property where their sale to strangers would be objectionable may not be sold to a third party.) If the settlement takes place in a district court, the court will decide how the sale shall take place if the spouses do not reach agreement on this. The court may decide that a sale shall take place only between the spouses (§ 71 para. 2 Norwegian Marriage Act). If the settlement takes place out of court, each of the spouses may demand that the sale shall take place through the enforcement



authorities pursuant to the provisions regarding forced sale in so far as they are appropriate unless they agree on another manner of sale (§ 71 para. 2 Norwegian Marriage Act).

Each of the spouses has, however, the right to retain certain items of property. Firstly, a spouse has the right to retain items of property which he or she owns fully or for the main part, unless this would be obviously unfair under the circumstances (§ 66 Norwegian Marriage Act). Secondly, regardless of previous ownership, a spouse may demand to take over the common residence and household goods, when there are special reasons for doing so (§ 67 Norwegian Marriage Act). If the value of the items of property that a spouse takes over exceeds the share to which the said spouse is entitled, he or she shall pay the other spouse the excess amount (§ 70 para. 1 Norwegian Marriage Act).

**123. Do the spouses have preferential rights over allocation of the matrimonial/family home and/or the household's assets?**

When there are "special reasons" for doing so – regardless of previous ownership – a spouse may demand to take over the matrimonial/family home, i.e. 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 (§ 67 para. 1 (a) Norwegian Marriage Act). A spouse may also demand to take over 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 or a lease entitling them to the common residence (§ 67 para. 1 (b) and (c) Norwegian Marriage Act).

Regardless of previous ownership, a spouse may demand to take over ordinary household goods in the common home when there are "special reasons" for doing so (§ 67 para. 1 (d) Norwegian Marriage Act).

The needs of the spouses and their children are important factors when considering whether the criterion of "special reasons" is fulfilled (§ 67 para. 2 Norwegian Marriage Act).

If the value of the items of property that a spouse takes over exceeds the share to which the said spouse is entitled, he or she shall pay the other spouse the excess amount (§ 70 para. 1 Norwegian Marriage Act).

**124. Do the spouses have preferential rights over the allocation of other assets?**

A spouse has the right to retain items of property which he or she owns fully or for the main part (in practice the spouse must own more than 75% to 80 %), unless this would be obviously unfair under the circumstances (§ 66 Norwegian Marriage Act). If the value of the items of property that a spouse takes over exceeds the share to which the said spouse is entitled, he or she shall pay the other spouse the excess amount (§ 70 para. 1 Norwegian Marriage Act).

Regarding personal and non-transferable assets mentioned in § 61(a) and (c), a spouse may keep the actual item of property as well as withholding the assets from the division. This is property that is meant for the exclusive personal use of the spouse, e.g. clothing and jewellery, and family photographs and family papers which derive from his or her relatives, § 61 (a), and non-transferable or personal assets, e.g. unpublished manuscripts or prizes with inscriptions (§ 61 (c) Norwegian Marriage Act). The same applies to items of property that have been acquired especially for use by the children (§ 61 (e) Norwegian Marriage Act). The spouse who is awarded responsibility for the daily care of the children may demand that such items of property be withheld.

**125. To what extent, if at all, does the dissolution of the matrimonial property regime affect the attribution of maintenance?**

In many cases the duty to support ceases when the property regime is dissolved. After the cessation of cohabitation, the spouses have only a limited right to maintenance, § 79 to 81, and obligations of the spouses to support the family pursuant to § 38 cease to exist upon the cessation of cohabitation (if the spouses are not already separated or divorced) (§ 79 para. 1 Norwegian Marriage Act). The date of the cessation of cohabitation is often decisive for the dissolution of the matrimonial property regime. According to § 60 Norwegian Marriage Act, a division is to be made of the assets each spouse owned when the petition for separation or divorce was received, or when cohabitation ceased if this took place first.

**126. To what extent, if at all, does the dissolution of the matrimonial property regime affect the pension rights and claims of one or both spouses?**

According to § 61 (b) Norwegian Marriage Act a spouse may withhold all pension rights and claims from division. The dissolution of the matrimonial property regime may still affect the pension rights indirectly, as the other spouse may be awarded compensation when the division takes place. According to § 61 (b) Norwegian Marriage Act, if withholding pension rights causes the other spouse to be placed in an unfairly adverse position, the latter may be awarded a sum to prevent this. When assessing whether compensation shall be awarded, an important consideration is whether the marriage has lasted for a long time. It may be decided that the sum shall be paid in instalments. This compensation rule is rarely used in practice.

If a spouse *has used deferred community property* that otherwise would be subject to division to acquire pension rights specified in § 61 (b), the other may demand compensation in so far as the expenses exceed what must be considered reasonable (§ 63 para. 1 Norwegian Marriage Act).

**127. On what conditions, if at all, can the general rules (above Q 121) be set aside or adjusted, e.g. by agreement between the spouses or by the competent authority?**

The spouses have freedom to enter into agreements under the settlement. According to § 65, the provisions of the Marriage Act do not prevent the spouses from entering into an agreement regarding the division of assets at the time of divorce (or separation). Such an agreement may, however, be wholly or partly annulled if it will lead to an unfair financial result for one of the parties. In practice this rule has been interpreted extremely restrictively, and has rarely been used.<sup>19</sup>

If the right to withhold assets that can be traced back to premarital assets, gifts or inheritances (the unequal division rule in § 59 para. 1 Norwegian Marriage Act) will lead to an “obviously unfair result”, it may be set aside entirely or partly (§ 59 para. 2 Norwegian Marriage Act). On the other hand, a spouse may be awarded the right to withhold from the division all or part of the assets that are acquired during the marriage, if there are strong reasons for doing so (§ 59 para. 3 Norwegian Marriage Act). These rules have been interpreted restrictively in practice.<sup>20</sup>

**128. Are there besides the rules of succession specific rules applicable if one of the spouses dies?**

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<sup>19</sup> Norwegian Supreme Court Reports 2001, p. 716.

<sup>20</sup> Norwegian Supreme Court Reports 1999, p. 177 and 2002, p. 1596.

Upon death, the assets of the spouses shall be divided between the surviving spouse and the heirs of the deceased, unless the surviving spouse makes use of the right to remain in possession of the undivided estate. According to § 76 and 77 Norwegian Marriage Act, if the assets of the spouses are to be divided between the surviving spouse and heirs of the deceased, the provisions of Ch. 12 Norwegian Marriage Act concerning divorce (§ 56 to 65) will apply. However, the heirs of the spouse who died first may not demand the withdrawal pursuant to § 61 Norwegian Marriage Act and compensation pursuant to § 63 Norwegian Marriage Act. Furthermore, upon the distribution of an undivided estate, an unequal division pursuant to § 59 Norwegian Marriage Act may not be demanded by any of the parties.

#### IV. Separation of property

##### IV.1. Categories of assets

###### 129. Describe the system. Indicate the different categories of assets involved.

Under the separation of property regime, spouses own their property separately during the marriage. The system of separate spheres of property is reflected in the general rule in § 31 para. 1 Norwegian Marriage Act 1991: "Marriage entails no limitation of the right of a spouse to dispose of what he or she owns when the marriage is contracted or later acquires,..." and in § 40 Norwegian Marriage Act: "A spouse may not contract a debt which affects the other spouse."

Upon the termination of marriage each spouse retains whatever he or she owns that is separate property, § 42 (nuptial agreement) and § 48 (provision by a donor or testator) Norwegian Marriage Act. The separate property regime will not apply upon death if this is agreed upon through a nuptial agreement or stipulated by a donor or testator, (§ 42 para. 3 and § 48 Norwegian Marriage Act). The survivor may have the right to remain in undivided possession of separate property if this is agreed upon pursuant to § 43 (§ 48 Norwegian Marriage Act).

A spouse who has been instrumental in increasing the means of the other spouse that are separate property may be awarded compensation. According to § 73, if a spouse by contributing to the support of the family, by working or in some other way, has significantly helped to increase means that are the separate property of the other spouse, he or she may be awarded compensation from the other spouse. When there are strong reasons for doing so, a spouse may also obtain ownership of the common residence and household goods which are the separate property of the other spouse. In these cases the market value of the items of property must be paid to the owner (§ 74 para. 1 and § 69 para. 1 Norwegian Marriage Act).

###### 130. What assets comprise the separate property of the spouses?

Spouses may by means of a marriage settlement (a nuptial agreement) agree that what they own or later acquire shall be exempted from division (separate property) (§ 42 para. 1 Norwegian Marriage Act). In this case all assets of the spouses comprise the separate property of the spouses. The agreement may, however, be limited so as to apply to the assets of one of the spouses or parts of the assets of one or both of the spouses. The agreement may also be made for a limited period of time or conditional on the spouses not having natural heirs from their marriage (§ 42 para. 2 Norwegian Marriage Act).

A donor or testator may also provide that the legacy or gift shall be separate property (§ 48 Norwegian Marriage Act). For a legacy this must be provided by a will.

According to § 49 Norwegian Marriage Act, any substitution for property that is separate property, becomes separate property unless otherwise provided by the spouses by means of a marriage settlement, or stipulated by the donor or testator. The same applies to any income from such property.

**131. Can spouses acquire assets jointly? If so, what rules apply?**

Yes, the spouses can acquire assets jointly. According to § 31 para. 2 Norwegian Marriage Act items of property acquired by both spouses are owned by both spouses (co-ownership) and the 1965 General Act relating to Co-ownership applies to such items of property. Even though each spouse owns his or her property separately, the particular items of property are in practice often co-owned by the spouses.

In 1975, the Norwegian Supreme Court acknowledged an indirect contribution in the form of child care and housework. According to the Court's decision a wife who stays at home and cares for small children may become a co-owner of the house purchased during the marriage by her husband solely with his income earned during the marriage.<sup>21</sup> Even if the spouses had agreed through a nuptial agreement to a separate property regime, this rule relating to the acquisition of property was applied, as long as the spouses had not agreed upon who was to be deemed the owner of the particular items of property.<sup>22</sup> The Norwegian Supreme Court has also determined that creditors must respect co-ownership rights of this nature.<sup>23</sup>

This rule was partly codified in the Norwegian Marriage Act 1991, § 31, para. 3 and applies to separate property as well as deferred community property. The rule covers not only the common residence, but also other items of property for mutual and personal use, e.g. a second home, a car or a boat, and applies unless the spouses have expressly agreed upon who is to be considered the owner. According to the preparatory works of the Marriage Act, a moderately larger contribution in the form of child care and/or household work is required when the spouses have a completely separate property regime, compared to when the spouses have a deferred community property regime.<sup>24</sup> Indirect contributions in the form of covering the family's current expenditures are acknowledged as well.<sup>25</sup>

As long as the spouses have not agreed upon who is to be deemed the owner of the particular items of property, co-ownership is based on what the parties contributed to the acquisition of the property. A homemaker's indirect contributions in the form of care for small children are sufficient in the majority of cases to make her an equal co-owner of the common residence or other items of mutual and personal use bought by the husband with his income earned during the same period of time. If the children are of compulsory school age and the wife still works full-time at home, her work will normally contribute to less. However, in modern marriages, women assume paid work after a shorter period at home, and they will therefore normally contribute on an equal footing in these cases as well.

**132. Is substitution of assets (e.g. barter agreement) governed by specific rules? Distinguish where necessary between movables and immovables.**

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<sup>21</sup> Norwegian Supreme Court Reports 1975, p. 220.

<sup>22</sup> Norwegian Supreme Court Reports 1980, p. 1403 and 1982, p. 1269

<sup>23</sup> Norwegian Supreme Court Reports 1978, p. 871.

<sup>24</sup> Ot.prp. no. 28 (1990-91), p. 62.

<sup>25</sup> Norwegian Supreme Court Reports 1977, p. 533 and 1979, p. 1436.

According to § 49 Norwegian Marriage Act, any substitution for property that is separate property becomes separate property unless otherwise provided by the spouses by means of a marriage settlement, or stipulated by the donor or testator. The same applies to any income from such property.

**133. What is the position of pension rights and claims and insurance rights?**

Under the separation of property regime each spouse retains whatever he or she owns upon the termination of marriage (§ 42 Norwegian Marriage Act). This includes pension rights and claims and insurance rights.

**134. How is the ownership of the assets proved as between the spouses? Are there rebuttable presumptions?**

In Norway, ownership is obtained regardless of title, and a legally enforceable agreement relating to land does not have to be in writing, although this is normally the case. Title can, however, together with other factors serve as proof of an agreement, but title in itself is not sufficient proof.<sup>26</sup> As long as the spouses have not agreed (expressly) upon who is to be deemed the owner of the particular items of property, co-ownership is based on what the parties contributed to the acquisition of the property. If both spouses have made a direct financial contribution to the purchase price of an item of property for mutual personal use, there is a presumption that the spouses have made a tacit agreement of co-ownership even if one of the spouses is the actual buyer. This presumption is rebuttable – specific circumstances might suggest that the financial contribution was a gift or a loan. Not only a direct, but also an indirect contribution is acknowledged (§ 31 para. 3 Norwegian Marriage Act). Indirect contributions in the form of covering the family's current expenditures are acknowledged as well. No specific presumption applies in this assessment. Assuming the conclusion is co-ownership, the spouses own an equal part unless circumstances justify a different fraction of ownership (§ 2 Norwegian Co-ownership Act 1965).

**135. How is the ownership of the assets proved as against third parties? Are there rebuttable presumptions?**

If the debtor is married, his or her creditor may seize half of the common residence if it is acquired during marriage, provided no other ownership is proved, according to § 7-13 para. 3 first sentence Norwegian Act relating to enforcement of claims 1992. This presumption is easily rebutted.<sup>27</sup>

Against the creditors, title is not in itself sufficient proof that one of the spouses is the single owner. This rule regarding the weighing of evidence is codified in § 7-13 para. 3 second sentence Norwegian Act relating to enforcement of claims 1992.

**136. Which debts are personal debts?**

The system of separate spheres of property is reflected in the general rule regarding the liability of spouses for debts in § 40 Norwegian Marriage Act, which states that a spouse may not contract a debt which affects the other spouse. In certain cases, however, a spouse has the right to enter into agreements resulting in the liability of both spouses (§ 41 Norwegian Marriage Act). A spouse may, during cohabitation, with liability for both spouses enter into ordinary agreements

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<sup>26</sup> Norwegian Supreme Court Reports 1980, p. 1403.

<sup>27</sup> Norwegian Supreme Court Reports 1999, p. 199.

regarding the daily housekeeping and the upbringing of their children etc. These rules are irrespective of the matrimonial property regime.

**137. Which debts are joint debts?**

The spouses may have joint debts if they have both contracted the debt (§ 40 Norwegian Marriage Act). In certain cases, however, a spouse has the right to enter into agreements involving the liability of both spouses (§ 41 Norwegian Marriage Act). A spouse may, during cohabitation, with liability for both spouses, enter into ordinary agreements regarding the daily housekeeping and the upbringing of their children and ordinary agreements to cover the necessary requirements of the individual spouse. This also applies to the leasing of a common residence. Such agreements are considered to be entered into on the liability of both spouses, as long as the credit is provided by the other party – and not by a bank or other third party. If the other party (the seller, the lessor etc.) understood or should have understood that the agreement exceeded the right of the spouse, only the said spouse will incur liability. These rules are irrespective of the matrimonial property regime.

**138. On which assets can the creditor recover personal debts?**

The creditor can recover personal debts from all assets that belong to the debtor spouse, regardless of whether the assets are deferred community property (*felleseie*) or separate property (*særeie*).

**139. On which assets can the creditor recover joint debts?**

The creditor can recover joint debts (solidarity obligations) from all assets that belong to either of the two debtor spouses, regardless of whether the assets are deferred community property or separate property .

**IV.2. Administration of assets**

**140. How are assets administered?**

According to § 31 para. 1 Norwegian Marriage Act, a marriage entails no limitation of the right of a spouse to dispose of what he or she owns when the marriage is contracted or later acquires, unless the transactions concern the matrimonial/family home or ordinary household goods, § 32 and § 33 Norwegian Marriage Act. In the latter cases the disposal of the said items of property requires the consent of the other spouse.

**141. Can one spouse mandate the other to administer the assets?**

One spouse can authorise the other to administer specific items of property in accordance with the general law of agency.

**142. Are there important acts concerning assets (e.g. significant gifts, disposal of the matrimonial/family home or other immovable property) that require the consent of the other spouse?**

According to § 32 Norwegian Marriage Act, a spouse may not, without the written consent of the other spouse, transfer (i.e. sell or give away) property that is used as a common residence. Neither may the spouse mortgage, lease out, or enter into or terminate a lease or sublease agreement for such property. Written consent is also necessary if a spouse wants to transfer or

mortgage a part, share or bond to which the right to lease a common residence is attached. The matrimonial/family home is the common residence of the spouses. The common residence is the permanent residence of the spouses - if one of the spouses is, for example, imprisoned, the spouses are still protected by the provision. Normally the spouses can only have one common residence at a time.

According to § 33 Norwegian Marriage Act, a spouse may not, without the consent – oral or written - of the other spouse, transfer, lease out or mortgage “ordinary household goods in the common home”. “Ordinary household goods” are items of property that are usually kept inside a home, like furniture, household utilities, paintings etc. In determining whether an asset is ordinary or extraordinary, an important consideration is the economic position of the couple in question. Assets that are in fact capital investments, e.g. expensive paintings and antiques, are not covered by this provision.

These provisions apply until a decision has been made as to what is to be done with the property in the settlement between the spouses. However, when the items of property are separate property, the provision ceases to apply after the spouses are separated or divorced (§ 34 Norwegian Marriage Act).

§ 32 and 33 apply irrespective of the matrimonial property regime. The spouses may however agree that the restrictions shall not apply to items of property which are separate property, § 37. Such an agreement must be contracted in the form of a marriage settlement (a nuptial agreement).

If consent is refused or cannot be obtained within a reasonable time, the spouse or the other party to the agreement may demand that the district court decides the question whether the transaction is to be permitted. Permission shall be given if the court finds that there is no reasonable ground for the other spouse to refuse consent (§ 32 para. 2 and § 33 para. 2 Norwegian Marriage Act).

**143. Are there special rules for the administration of professional assets?**

There are no special rules for the administration of professional assets.

**144. Is there a duty for one spouse to provide information to the other about the administration of the assets?**

Spouses are under an obligation to give each other the information which is necessary to assess their financial position. For this purpose a spouse may demand that the other spouse and the tax assessment authorities provide information regarding the joint tax return and tax assessment or the tax return and tax assessment of the other spouse. A spouse may also demand information from companies, enterprises or other institutions engaged in financing or insurance activities, and from others who manage funds (§ 39 Norwegian Marriage Act Norwegian Marriage Act).

**145. How are disputes between the spouses concerning the administration of assets resolved?**

Conflicts between the spouses concerning the administration of assets must be resolved according to general principles of law. There are no special rules in the Marriage Act that deal with such conflicts during the marriage.

**146. What are the possible consequences when a spouse violates the rules governing the administration of assets? What are the possible consequences in other cases of maladministration of the assets?**

Since marriage as the main rule entails no limitation of the right of a spouse to dispose of what he or she owns, § 31 para. 1 Norwegian Marriage Act, a spouse has no right to dispose of property that belongs to the other spouse. A violation of this rule could be a criminal offence.

If a spouse has acted contrary to § 32 or § 33 Norwegian Marriage Act (disposal without consent), the other spouse may demand that the agreement be rescinded by a court judgment. An agreement that is covered by § 33 (household goods) may not however be rescinded if the other party at the time of delivery had reasonable grounds to believe that the spouse had the right to contract the agreement. Proceedings must be instituted within six months after the spouse received information of the agreement, and not later than one year after the judicial registration of title if the agreement concerns real property, or after delivery if it concerns other items of property (§ 35 Norwegian Marriage Act).

**147. What are the possible consequences if a spouse is incapable of administering the assets?**

If a spouse is incapable of administering his or her assets, the general law of guardianship will apply. Often a provisional guardian will be appointed pursuant to § 90 a et seq. Norwegian Guardianship Act.

**IV.3. Distribution of assets upon dissolution**

**148. What are the grounds for the dissolution of the matrimonial property regime, e.g. change of property regime, death of a spouse or divorce?**

As each spouse retains whatever he or she owns upon the termination of the marriage, there is, strictly speaking, no property regime to dissolve.

However, if a spouse by contributing to the support of the family, by working or in some other way has significantly helped to increase means that are the separate property of the other spouse, the court has discretionary power to award compensation pursuant to § 73 Norwegian Marriage Act. Compensation pursuant to § 73 Norwegian Marriage Act may be claimed in the following cases.<sup>28</sup>

1. separation and divorce, § 57 (a) Norwegian Marriage Act.
2. agreement in a marriage settlement that a division shall take place, § 57 (b) Norwegian Marriage Act
3. the marriage is invalid or shall be dissolved due to bigamy etc., § 57 (d) and (e) Norwegian Marriage Act
4. death

**149. What date is decisive for the dissolution of the matrimonial property regime? Distinguish between the different grounds mentioned under Q 148.**

The decisive dates for claiming compensation pursuant to § 73 are (numbers referring to the numbers under Question 148):

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<sup>28</sup> NOU 1987: 30 p. 145 and Ot.prp. No. 28 (1990-91), p. 132.



1. when a petition for separation or divorce was received by the county governor or a writ demanding separation or divorce was received by the court, or when cohabitation ceased if this took place first, § 60 para. 1 (a) Norwegian Marriage Act. .
2. when the spouses agreed to a division pursuant to § 57 (b), § 60 para. 1 (b) Norwegian Marriage Act.
3. when a writ with a demand specified in § 57, para. 1, (d) or (e) Norwegian Marriage Act, was received by the court, § 60 para. 1 (d) Norwegian Marriage Act.
4. the time of death.

**150. What are the consequences of the dissolution of the matrimonial property regime regarding the separate or joint property of the spouses?**

Under the separation of property regime each spouse retains whatever he or she owns upon the termination of the marriage. If an item of property is co-owned by the spouses, each spouse retains his or her part of the said item of property.

If a spouse by contributing to the support of the family, by working or in some other way significantly has helped to increase means that are the separate property of the other spouse, he or she may be awarded compensation from the other spouse (§ 73 Norwegian Marriage Act).

When there are strong reasons for doing so, a spouse may obtain ownership of the common residence and household goods which are the separate property of the other spouse. In these cases the market value of the items must be paid to the owner (§ 74 para. 1 and § 69 para. 1 Norwegian Marriage Act).

In special cases, a spouse may also be granted the right to use a residence – although paying the market rent – which is the separate property of the other spouse (§ 74 para. 2 Norwegian Marriage Act).

If both spouses have completely separate property, claims pursuant to § 73 and 74 must be submitted within one year after the spouses were divorced. If one or both spouses also have items of property that are community property, claims must be submitted before the division has been concluded.

A nuptial agreement may be wholly or partly annulled if it will affect one of the spouses unfairly. Instead of annulling the agreement, the court may decide that the spouse who is placed in an unfairly adverse position is to be awarded a sum from the other spouse (§ 46 para. 2 Norwegian Marriage Act). In practice this rule has been interpreted extremely restrictively, and has rarely been used.<sup>29</sup> If all assets belonging to both spouses are separate property, a claim must be submitted within three years after the spouses were divorced. If one or both of the spouses have items of property that are deferred community property, claims must be submitted before the division is concluded.

**151. How are assets determined and valued? Are e.g. premarital assets and debts, assets acquired by gift, will or inheritance and debts related those assets, the increase in value of the spouses' property and debts related to that property, pension rights and claims and insurance rights taken into account?**

As each spouse retains whatever he or she owns, there is normally no need for a valuation of the assets. When there are "strong reasons" for doing so a spouse may, however, obtain ownership of

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<sup>29</sup> Norwegian Supreme Court Reports 1999, p. 718 and 2006, p. 833.

the common residence and household goods which are the separate property of the other spouse (§ 74 para. 1 Norwegian Marriage Act). In these cases the market value of the house must be paid to the owner. If the spouses do not agree on the value of the items of property, the value shall be determined by means of a probate valuation (§ 69 para. 1 Norwegian Marriage Act and § 125 Norwegian Probate Act).

**152. What are the relevant dates for the determination and valuation of assets? E.g. is the fact that the spouses are living apart before the dissolution of the marriage relevant?**

When a spouse is granted ownership of the common residence and household goods pursuant to § 74 para. 1 Norwegian Marriage Act, the valuation in a public administration of the estate shall be based on the value at the time of allocation, and in a private administration of the estate on the value at the time it was decided who should take over the item of property (§ 69 para. 2 Norwegian Marriage Act).

**153. What happens if one spouse's assets are used for investments in the other spouse's assets? Is there any right to compensation? If so is this a nominal compensation or is it based on the accrual in value?**

If a spouse by investing in separate property owned by the other spouse has significantly helped to increase means that are the separate property of the other spouse, the court has discretionary power to award compensation pursuant to § 73 Norwegian Marriage Act. The compensation is based on the accrual in value.<sup>30</sup>

**154. What happens if one spouse's assets have been used for payment of a debt of the other spouse? Is there a rule of compensation? And if so, how is compensation calculated?**

If a spouse by paying off debts relating to separate property owned by other spouse has significantly helped to increase the value of such property, the court has discretionary power to award compensation pursuant to § 73 Norwegian Marriage Act. The compensation is based on the accrual in value.<sup>31</sup>

**155. Do the spouses have preferential rights over the matrimonial/family home and/or the household's assets?**

When there are "strong reasons" for doing so, a spouse may obtain ownership of the common residence and household goods which are the separate property of the other spouse. In these – rare – cases the market value of the items of property must be paid to the owner (§ 74 para. 1 and § 69 para. 1 Norwegian Marriage Act). The rule applies to 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 (§ 67 para. 1 (a) Norwegian Marriage Act). The rule also applies to 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 or a lease entitling them to the common residence (§ 67 para. 1 (b) and (c) Norwegian Marriage Act).

**156. Do the spouses have preferential rights over other assets?**

No, the spouses do not have any preferential rights over other assets.

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<sup>30</sup> Norwegian Supreme Court Reports 2003, p. 1127.

<sup>31</sup> Norwegian Supreme Court Reports 2003, p. 1127.

**157. To what extent, if at all, does the dissolution of the matrimonial property regime affect the attribution of maintenance?**

Obligations of the spouses to support the family pursuant to § 38 cease to exist upon the cessation of cohabitation, if the spouses are not already separated or divorced (§ 79 para. 1 Norwegian Marriage Act). After the cessation of cohabitation the spouses have only a limited right to maintenance (§ 79 to 81 Norwegian Marriage Act).

**158. To what extent, if at all, does the dissolution of the matrimonial property regime affect the pension rights and claims of one or both spouses?**

The pension rights and claims of the spouses are not affected.

**159. Can the general rules (above Q 150) be set aside or adjusted, e.g. by agreement between the spouses or by the competent authority?**

When spouses have agreed that all or parts of their property shall be separate property, § 42 Norwegian Marriage Act, the agreement may be cancelled or altered by means of a new marriage settlement (a nuptial agreement) (§ 46 para. 1 Norwegian Marriage Act). The spouses can choose among the alternatives mentioned in § 42 to 44 Norwegian Marriage Act. If they choose an alternative which is not specific, the agreement is invalid, or partially invalid.

A donor or testator may also provide that the legacy or gift shall be separate property (§ 48 Norwegian Marriage Act). The beneficiary may not alter such provisions unless this has been specially authorized or clearly implied by the donor or testator.

According to § 49 Norwegian Marriage Act, any substitution for property that is separate property, becomes separate property, unless otherwise provided by the spouses by means of a marriage settlement, or stipulated by the donor or testator. The same applies to any income from such property.

A nuptial agreement may be wholly or partly annulled if it will affect one of the spouses unfairly, according to § 46 para. 2 Norwegian Marriage Act. Instead of annulling the agreement, the court may decide that the spouse who is placed in an unfairly adverse position is to be awarded a sum from the other spouse. If both spouses have completely separate property, claims must be submitted within three years after the spouses were divorced. If one or both of the spouses have items of property that are deferred community property, claims must be submitted before the division is concluded.

**160. Are there besides the rules of succession specific rules applicable if one of the spouses dies?**

A nuptial agreement may be wholly or partly annulled if it will affect one of the spouses unfairly, according to § 46 para. 2 Norwegian Marriage Act. However, the heirs of the deceased spouse may not present claims pursuant to § 46 para. 2 Norwegian Marriage Act.

The heirs of the deceased spouse cannot – in all probability – submit a claim for compensation pursuant to § 73 Norwegian Marriage Act, even if the deceased spouse increased means that were the separate property of the surviving spouse.<sup>32</sup>

**V. Separation of property with distribution by the competent authority**

Not relevant.

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<sup>32</sup> Holmøy/Lødrup, *Ekteskapsloven og enkelte andre lover med kommentarer*, Oslo 2001, p. 499 and Lødrup/Sverdrup, *Familieretten*, Oslo 2004, p. 297.

#### **D. MARITAL AGREEMENTS**

**191. Are future spouses permitted to make a pre-nuptial agreement regulating their property relationship? If so, is it binding? Or if it is not binding, does it have any effect?**

Yes, future spouses are permitted to make a pre-nuptial agreement regulating their property relationship, see Ch. 9 Norwegian Marriage Act. These pre-nuptial agreements are just as binding as post-nuptial agreements. The law does not discriminate between pre- and post-nuptial agreements.

**192. Are spouses permitted to make a post-nuptial agreement regulating or changing their property relationship? If so, is it binding? Or if it is not binding, does it have any effect?**

Yes, the spouses are permitted to make a post-nuptial agreement regulating their property relationship, see Ch. 9 Norwegian Marriage Act. Post-nuptial agreements are binding (as long as the agreement satisfies the conditions in Ch. 9).

**193. What formal requirements must the pre- and/or post-nuptial agreement fulfil to be valid as between the spouses?**

According to § 54 Norwegian Marriage Act, a nuptial agreement (a so-called marriage settlement) must be contracted in writing. The spouses must simultaneously 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 must also 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. If the consent of a guardian is required for a spouse who is without legal capacity, or the consent of a provisional guardian for a spouse with legal capacity, the said consent must be given in the same way. The witnesses must be legally competent and in full possession of all of their faculties. A marriage settlement that satisfies the requirements of this provision is binding on the spouses themselves and on their heirs (§ 54 para. 3 Norwegian Marriage Act).

**194. What formal requirements must the pre- and/or post-nuptial agreement fulfil to be valid in relation to a third party? Is there a system of registration of pre- and/or post-nuptial agreements? If so describe briefly the system and its effect.**

A nuptial agreement that satisfies the requirements of § 54 Norwegian Marriage Act – contracted in writing, two witnesses and signed – is binding on the heirs of the spouses.

For the marriage settlement to be legally protected from the creditors of the spouses, it must be judicially registered in the Register of Marriage Settlements at the Brønnøysund Register Centre, § 55 para. 1, as long as the agreement transfers property from one spouse to the other. Thus, an agreement which only transforms deferred community property to separate property – and vice versa – does not require registration. A marriage settlement which transfers real property from one spouse to the other must, furthermore, be judicially registered by the registrar for judicial registration of title to real property pursuant to the general rules. The same applies to other items of property the assignment of which requires judicial registration or other registration in order to obtain legal protection (§ 55 para. 2 Norwegian Marriage Act).

The information in the Register of Marriage Settlements is public, and registrations after 1981 can be found in a database.

**195. Is full disclosure of the spouses' assets and debts necessary for the making of a pre- and/or post-nuptial agreement?**

Full disclosure of the spouses' assets and debts is not necessary for the making of a nuptial agreement.

**196. If the agreement has to be made before an official (e.g. a notary), is that official obliged to inform the spouses about the content and the consequences of the pre- and/or post-marital agreement? If so, what happens if the official does not fulfil his or her obligation?**

The agreement need not be made in presence of an official (§ 54 Norwegian Marriage Act).

**197. Provide statistical data, if available, regarding the making of pre- and/or post-nuptial agreements.**

About 23,500 couples married in Norway in 2007 (<http://www.ssb.no/ekteskap/>) and the great majority of these couples choose the default regime (deferred community property).

The yearly number of nuptial agreements registered in the Register of Marriage Settlements is approx. 3500. Approx. 70 % of the registered agreements are post-nuptial agreements and 30 % are pre-nuptial agreements.

Agreements regarding an exemption from division (separate property) constitute approx. 85 % of the total number of agreements. The remaining 15% concern the re-establishment of the default system (§ 46 para. 1 Norwegian Marriage Act), the expansion of the default regime (§ 44 Norwegian Marriage Act) and gifts between spouses (§ 50 para. 1 Norwegian Marriage Act). This information was obtained from the Brønnøysund Register Centre.

In addition to the registered agreements, however, an unknown number of unregistered nuptial agreements are in existence, as nuptial agreements are binding both on the spouses and on the heirs of the spouses without registration (§ 54 para. 3 Norwegian Marriage Act). An agreement must be judicially registered in order to obtain full legal protection against the creditors of the spouses. It seems reasonable to assume that that the majority of nuptial agreements are registered.

**198. May spouses through pre- and/or post-nuptial agreements only choose, where applicable, a statutory matrimonial property regime and/or do they have the freedom to modify such a regime or even create their own regime?**

Spouses have, through nuptial agreements, the freedom to choose a separate property regime and to modify such a regime as long as the agreement satisfies the conditions in § 42 and § 43 Norwegian Marriage Act. The agreement may be limited so as to apply to the assets of one of the spouses or parts of the assets of one (or both) of the spouses. The agreement may also be made for a limited period of time or conditional on the spouses not having natural heirs from their marriage. Spouses may also agree that the separate property regime shall not apply in the case of a settlement after the death of one of the spouses. Such an agreement may be limited to applying only if a particular spouse dies first (§ 42 para. 3 Norwegian Marriage Act). Spouses may also

agree that the survivor shall have the right to remain in undivided possession of separate property, or of parts of separate property (§ 43 Norwegian Marriage Act).

Furthermore, spouses may modify the deferred community property regime in accordance with the alternatives in § 44 Norwegian Marriage Act, i.e. divide premarital assets, gifts and inheritance. Such an agreement may be limited to applying to the assets of one spouse or parts of the assets of one (or both) spouses. The agreement may also be made conditional on settlement taking place after a specific period of time or on the spouses having natural heirs from their marriage. Furthermore, the agreement may be limited to applying in the event of settlement after the death of one of the spouses or of a particular spouse.

Due to the multitude of alternatives, the spouses can to a large extent modify the regime to suit their individual needs. They cannot, however, create their own regime altogether – if they choose an alternative which is not specifically mentioned in § 42 to 44 Norwegian Marriage Act, the agreement is invalid, or partially invalid.

**199. If spouses can modify through pre- and/or post-nuptial agreements a statutory regime or create their own regime, can those modifications be made to:**

**a. categories of assets**

Yes, modifications can be made to categories of assets. For example, according to § 42 Norwegian Marriage Act, spouses may agree that certain assets shall be transformed from deferred community property to separate property. Due to the fact that the spouses own their property separately under the default regime (deferred community property) as well as under the separation of property regime, this re-categorisation only affects the distribution of assets upon the dissolution of marriage.

**b. administration of assets**

Modifications can be made to the administration of assets in one case: According to § 37 Norwegian Marriage Act, spouses may agree that the restrictions on the spouses' right to dispose of the common residence etc. in § 32 and 33 shall not apply to assets which are separate property. Such an agreement must be contracted through a nuptial agreement.

**c. distribution of assets;**

Spouses may agree that certain assets shall be exempted from the equal division (separate property), § 42 Norwegian Marriage Act. They *cannot* however agree that assets shall be divided other than equally (50-50).

**d. depend upon the ground of dissolution of the marriage?**

Spouses may agree that the separate property regime shall not apply in the case of a settlement after the death of one of the spouses (§ 42 para. 3 Norwegian Marriage Act). An agreement that modifies the deferred community property regime in accordance with § 44 Norwegian Marriage Act, may also be limited to applying in the event of settlement after the death of one of the spouses.

**200. Are there typical contractual clauses used in practice to modify essential elements of the matrimonial property regime, where applicable, or to achieve a certain result, e.g. that certain rights are excluded only upon divorce but not on death of a spouse?**

It is not unusual to transfer items of property from one spouse to the other and simultaneously to categorise the property as separate property. Sometimes this re-categorisation is due to a misunderstanding – spouses believe that separate property is better protected against the creditors than deferred community property. This is however not the case. Spouses own their property separately under the deferred community property regime, and property belonging to one spouse has the same protection against the other spouse’s creditors as under the separate property regime.

It is not unusual for spouses to agree that the separate property regime shall fully or partially be set aside in the case of a settlement after the death of one of the spouses. However, as the number of spouses with stepchildren is increasing, many spouses now seem to prefer the exclusion of their assets from division upon death as well as upon divorce.

**201. Can the competent authority override, modify or set aside pre- and/or post-nuptial agreements on account of unfairness or any other ground?**

A nuptial agreement may be wholly or partly annulled if it will affect one of the spouses unfairly. Instead of annulling the agreement, the court may decide that the spouse who is placed in an unfairly adverse position is to be awarded a sum from the other spouse (§ 46 para. 2 Norwegian Marriage Act). In practice this rule has been interpreted extremely restrictively, and has rarely been used.<sup>33</sup> If all assets belonging to both spouses are separate property, claims must be submitted within three years after the spouses were divorced. If one or both of the spouses have items of property that are deferred community property, claims must be submitted before the division is concluded.

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<sup>33</sup> Norwegian Supreme Court Reports 1999, p. 718 and 2006, p. 833.