

## **Divorce**

### **What are the conditions for obtaining a divorce?**

In Poland the law relating to divorce is set out in the Family and Guardianship Code .

A husband or wife can obtain a divorce **by filing a petition** to the court.

**Petitioner** – The person applying for the divorce.

**Respondent** – The other party involved.

The petitioner must prove that the marriage has broken down irretrievably and provide evidence for the grounds of divorce.

### **Grounds for divorce - complete and irretrievable breakdown of marriage.**

The breakdown is complete when all fundamental bonds (emotional, physical and economic) between the spouses cease to exist.

However, despite the complete and irretrievable breakdown of marriage, a divorce is not permitted if it could be **detrimental to the welfare of the minor children** of the spouses or if there are other reasons indicating that a divorce would violate the principles of social life.

The court may also refuse to grant a divorce if the spouse seeking a divorce is found to **be solely at fault for the breakdown of marriage** and the innocent spouse does not consent to a divorce, unless the refusal **violates the principles of social life**.

### **What are the legal consequences of a divorce as regards:**

1. The personal relations between the spouses (e.g. the surname)

The wife is free to revert to her maiden name if she so chooses. In order to **restore a maiden name** (or revert to the previous surname), the spouse should submit a relevant application to the head of the Register Office ( *also*: the Office of Vital Statistics) within 3 months after the divorce decree becomes final.

**2. The minor children of the spouses** (e.g. parental responsibility and maintenance claims) In the **divorce decree** the court decides parental rights over the minor children of both spouses and the amount that each spouse must pay to cover the children's maintenance and education. The court may entrust the exercise of parental rights to one parent, limiting the parental rights of the other parent to specific obligations and rights in relation to the child(ren). On divorce, the court must determine custody over the minor

children of the spouses. The gender of the parent still seems to be one of the most important factors. The courts favour mothers of young children.

**3) the division of property of the spouses** From the moment the spouses are married, the **joint property** of husband and wife (marital/community property) is established by law. It covers the property they acquire (**statutory joint ownership**). This joint ownership ceases when the marriage comes to an end, i.e. when the final **divorce decree takes effect**. At the request of one of the spouses the court may divide the joint property in the divorce decree. The acquired property of the spouses is composed of the items acquired by one or both of them while joint ownership applied. Both spouses have equal shares in the community property. If they have **material grounds**, either spouse may ask the court to divide the joint property according to the degree to which each spouse contributed to **the acquisition of that property**.

### **Contractual Regime**

A matrimonial/marital agreement (**prenuptial = prenup or postnuptial**) is a contract establishing a regime of separation of property or modifying or terminating the legal regime. Spouses are free to establish **a regime of separation of property** or modify the **legal regime**. Any provisions of the legal regime that are not excluded or modified by agreement **retain their full force and effect of law** for the parties.

As a general rule, a matrimonial agreement is governed by the same general rules of conventional obligations **unless otherwise provided by law**. However, they cannot contain **provisions that are prejudicial** to third parties. In other words, parties could not enter into a contract to **fraudulently cheat** a creditor from an amount that is **legitimately due to him**. The creditor would then have a right of action to sue to have the matrimonial agreement set aside and **declared null**.

Under the regime of separation of property, each spouse acting alone uses, enjoys and **disposes of** his property without **the consent or concurrence** of the other spouse. Each spouse is normally only liable for the **debts they incur** for their separate estates. However, a **spouse is solidarily liable** with the other spouse who **incurs an obligation** for **necessaries** for himself or the family. Each spouse is to **contribute to the expenses** of the marriage in accordance with the matrimonial agreement. In the absence of such a provision, each spouse is to contribute in proportion to his means.

## **Community/matrimonial/marital Property**

**The statutory matrimonial property regime is the community of property, which takes effect upon conclusion of the marriage.** The legal regime provides that each spouse owns a present undivided one-half interest in all the property acquired by the community. Unless specifically **exempted**, everything acquired by a spouse during the existence of a community is presumed to be community property and is owned equally by both spouses. Community property comprises property acquired during the existence of the legal regime through the effort, skill or industry of either spouse. Generally, income from community property is community income and income from separate property of the spouses is also community income. There is a **presumption** that things acquired or in the possession of a spouse during the existence of a community are community things but either spouse may prove that they are separate property.

## **Separate Property**

The separate property of a spouse is his exclusively. Such separate property comprises property acquired by a spouse prior to the establishment of a community property regime, property acquired by a spouse by **inheritance** or donation to him individually, **damages awarded** to a spouse in an action for breach of contract against the other spouse or for the **loss sustained** as a result of **fraud or bad faith** in the management of community property by the other spouse, damages or other **indemnity** awarded to a spouse in connection with the management of his separate property, and things acquired by a spouse as result of a voluntary partition of the community during the existence of a community property regime. When a spouse **sustains personal injuries** and receives an award for the injury or disability, that award remains his separate property. The idea here is that the person's body is clearly an item of separate property and the other spouse should not share in any financial award relating to the body. However, any related **award reimbursing** or providing for medical expenses or providing for lost compensation is community property since medical **expenses incurred** and wages earned would be classified as community. **If the person had been able to continue to work, then the income that he would have earned would have been community** so the award replacing those funds are also community funds. Even in the case where the working spouse did not make all the **contributions to the disability plan**, where the plan was partly funded by the employer and

where the plan was not part of the employer's compensation structure, the benefits were community property.

### **Division of property for unmarried couples on the breakdown of the relationship**

There is no specific legislation governing division of property for unmarried couples on the breakdown of their relationship. There are no universal rules indicating how, and under which specific provisions of the PCC or FGC, the property of cohabitants should be divided. However, it is clear that cohabitants should not be treated similarly to spouses at dissolution of the relationship in terms of property division and the provisions governing division of marital property should therefore not apply. Depending on the factual circumstances of the case, the courts adopt different approaches to dividing property for unmarried couples. Some courts have tried to employ provisions concerning a **civil partnership agreement**, but the majority of courts adopt a **division of co-ownership** or **unjust enrichment** approach. The same rules apply to same-sex couples.