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# Getting married? – Remember the finances



## Splitting of property on separation, divorce, or death

When a couple marries, the marriage will impact their mutual financial affairs, particularly in relation to the splitting of property on separation, divorce, or death, pursuant to the Spouse Act (Act no. 548 of 30 May, 2017, on the financial affairs of spouses) which came into effect on 1 January, 2018.

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### How will getting married impact your mutual financial affairs?

- In the course of the marriage
- On separation and divorce
- How will the property be divided on separation and divorce?
- How will the property be divided when a spouse dies?
- Do you want to know more?

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## In the course of the marriage

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### Right of disposal

In the course of the marriage, both spouses have the right of disposal of their own assets. This is called "sole management". For example, if one spouse owns a car, he or she may sell the car without consulting the other spouse.

However, you are both under an obligation to manage your assets in an appropriate manner. A spouse is not allowed to mismanage his or her assets if this reduces their value to the detriment of the other spouse.

For example, a spouse may not sell the permanent residence of the family without consulting the other spouse. This also applies to a residence you have acquired but not moved into yet.

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### Joint ownership

Getting married does not necessarily mean that you automatically will share the ownership of the things you buy.

You will have joint ownership only of things you buy together. For example, if you buy a car together and you both pay for it you will share the ownership of the car. This is called "joint ownership". If you both own the car,

you must agree to sell it.

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### Debts

As a rule, you are liable for your own debt(s) only whether or not the debt(s) was/were contracted before the marriage or in the course of the marriage. This is called "separate liability".

However, if you raise a loan together, e.g. to buy a car, you will both be liable for this debt.

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### Intra-spouse agreements and gifts

You may make agreements with each other and give each other gifts.

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### Obligation to maintain each other

After the marriage, you are under an obligation to maintain each other.

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# On separation and divorce

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## Community of property

The matrimonial property regime automatically given to newlyweds is the so-called "community of property". This means that your assets will be divided evenly between you on separation or divorce. Please see below for information on how your property will be split if one spouse dies.

The property of a spouse to be divided evenly is called "dividable property".

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## Dividable property

As a rule, all your assets will be divided between you on separation and divorce:

- Property you owned when you got married.
- Property you acquire in the course of the marriage.
- Inheritance and gifts you received before the marriage.
- Inheritance and gifts you receive in the course of the marriage.

This means that all your assets are divided evenly between you on separation and divorce. This also applies to items such as a business, a house, a car, a caravan, stocks, inherited paintings etc. Furthermore, it applies to savings which one spouse carries with him/her into the marriage.

However, such assets will not be included in the 50/50 split if it is separate property. Please see below regarding agreements on separate property.

The 50/50 split does not apply to:

- Separate property. An agreement on separate property must be part of a matrimonial property agreement between the spouses, or separate property may be determined by a testator or a donor.
- Personal effects such as jewelry, clothes, watches and some sports or hobby equipment depending on the situation.
- Reasonable pension rights.
- Individual compensations such as compensation, indemnification and insurance payments etc. based on loss of the ability to work, life impairment, critical illness, pain and suffering etc.
- Non-transferable and personal rights such as copyright and goodwill.

Please see below regarding agreements on separate property.

## Pensions

As a rule, your pensions will not be included in the splitting of property. This means that if you have a standard occupational pension scheme or a retirement pension, this is not to be shared with the other spouse.

But if one or both of you has/have been saving additional money for pension and you have been married for more than five years, then this additional pension will be divided between you.

A spouse with no pension or only a small pension may be awarded financial compensation from the other spouse.

If you want to split your retirement pensions, capital pensions or retirement benefits payable in installments, you should sign a marriage settlement. Please see below for further details.

You cannot agree to split a life annuity.

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## Separate property – an option to agree on another matrimonial property regime

If you want to agree on another matrimonial property regime than community of property, you may tailor your own.

For example, you may indicate that certain effects are to be separate property. Agreements on separate property are to be included in a matrimonial property agreement.

The matrimonial property agreement must be in writing and both spouses must sign it. The matrimonial property agreement must be registered with the Land Registration Court (Tinglysningsretten) to be valid. Please refer to [www.tinglysningsretten.dk](http://www.tinglysningsretten.dk) for further information.

Separate property will not to be divided on separation and divorce.

It is possible to agree on various types of separate property. For example, separate property could include all the assets of the couple, only a part of the assets or merely one or a few assets. Furthermore, separate property could be time limited.

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# How will your property be divided between you on separation and divorce?

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## Community of property

If you are divorcing, your property will be assessed and divided. This is called "division of property". The property owned by each spouse will be divided evenly between you unless you have agreed otherwise.

As a rule, the community of property ceases at the end of the day where the Agency of Family Law (Familiieretshuset) received your application for separation and divorce. However, the spouses may agree on another date.

In principle, the division of property is based on each spouse assessing his or her statutory share of joint estate. This is done by assessing how much one owns (property) and how much one owes (debt). Afterwards, the debt is deducted from the property and the division of property is performed like this:

- If both spouses own more than they owe (positive statutory share of joint estate), each spouse will get an even share.
- If one spouse owes more than he or she owns (negative statutory share of joint estate), only the statutory share of joint estate that is positive of the other spouse will be divided. The positive statutory share of joint estate will be divided evenly between the spouses.

In connection with the division of property, your individual belongings are divided between you as well.

If you cannot reach agreement on this matter, the probate court (skifteretten) may determine who gets what.

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## Separate property etc.

If you have a tailored arrangement which includes separate property, any and all division of property will be in accordance with your agreements. The part of your assets which is separate property will not be divided.

The value of individual compensations, indemnifications, insurance payments etc. of a spouse based on loss of the ability to work, life impairment, critical illness etc. will not be included in the division. The same applies to non-transferable and personal rights such as goodwill.

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# How will your property be split if a spouse dies?

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## Community of property

When the first spouse dies, the dividable property of both spouses will be split evenly between the surviving spouse and the heirs of the deceased spouse.

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## Separate property

Assets that are separate property will not be split.

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## Undivided possession of the estate

The surviving spouse may retain "undivided possession of the estate" (uskiftet bo) with the dividable property if the spouses have common children. If the deceased has children who are not of the marriage, these must consent to the surviving spouse retaining undivided possession of the estate.

If the entire property is separate property, the surviving spouse will not have the option of retaining undivided possession of the estate. If the deceased spouse had both dividable property and separate property, the surviving spouse will not have the option of retaining undivided possession of the estate in relation to the separate property.

Undivided possession of the estate means that the property will not be split on the death of the first spouse. Hence, the surviving spouse controls the entire property but is not allowed to misuse the property. The property will be split between the heirs of the spouses on the death of the longest-living spouse.

The longest-living spouse may decide to share the property with the heirs of the spouse who died first. The property must be shared if the surviving spouse wants to re-marry.

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# Do you want to know more?

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## Do you want to know more?

You should consult a legal adviser if you are considering making your own property arrangements.

Please go to the website of the Ministry for Children and Social Affairs at [www.sm.dk](http://www.sm.dk) under "Familier" to learn more.

To learn more about the division of property on separation and divorce, please refer to the website of the Danish Courts at [www.domstol.dk](http://www.domstol.dk) under: "Ægteskabssager - Deling af fællesbo" (Matrimonial cases - division of separate property).

