

Home>Family matters & inheritance>Property in marriage & civil partnerships>Property consequences of registered partnerships

Property consequences of registered partnerships

Austria

1 Are there different forms of "registered partnerships" in this Member State? Explain the differences between the different forms?

In addition to the institution of marriage, in Austria there is also the institution of registered partnership under the Registered Partnership Act (*Eingetragene Partnerschaft-Gesetz*, EPG).

In its judgment of 4 December 2017, the Constitutional Court abolished the differing regulations for opposite- and same-sex couples. Since 1 January 2019, same-sex couples can enter into a marriage in Austria. Similarly, opposite-sex couples can now enter into a registered partnership (previously reserved for same-sex couples).

The rules governing registered partnerships differ only slightly from the rules for marriages, e.g. as regards the minimum age (18 years; 'certificate of no impediment to marriage' not required from the age of 16) and as regards dissolution (permitted once the partners have been separated for three years; for marriages, a six-year period is provided for in exceptional cases).

2 Is there a statutory property regime for registered partnerships in this Member State? What does it provide? To which forms of "registered partnership" does it apply?

As is the case for marriage, the default property regime for registered partnerships is separation of property (*Gütertrennung*) (Section 1217(2) in conjunction with Section 1233 of the Austrian Civil Code, *Allgemeines Bürgerliches Gesetzbuch*). Each registered partner retains the property he or she brought into the partnership and is the sole owner of the property he or she acquires. Each registered partner is also the sole creditor to his or her debtors and the sole debtor to his or her creditors.

3 How can partners arrange their property regime? What are the formal requirements in this case?

Partners in a registered partnership can regulate their property regime by means of a registered partnership agreement under the same conditions as married couples. The parties can choose a different property regime from the default one by means of a contractual agreement. Such agreements require a notarial deed in order to be valid (Section 1 of the Notarial Deed Act, *Notariatsaktsgesetz*).

4 Are there restrictions on the freedom to arrange a property regime?

In terms of substance, the rules are the same as those governing marriage.

5 What are the legal effects of dissolution or annulment on the property consequences of the registered partnership?

In terms of substance, the rules are the same as those governing marriage (Sections 24 et seq. of the Registered Partnership Act).

6 What are the effects of death on the property consequences of the registered partnership?

In terms of substance, the rules are the same as those governing marriage (Sections 24 et seq. of the Registered Partnership Act).

7 Which authority has the competence to decide in a case relating to the property consequences of the registered partnership?

In terms of substance, the rules are the same as those governing marriage.

8 What are the effects of the property consequences of the registered partnership on legal relationships between a partner and a third party?

In terms of substance, the rules are the same as those governing marriage.

9 A short description of the procedure for the division, including partition, distribution and liquidation, of the property of the registered partnership in this Member State.

In terms of substance, the rules are the same as those governing marriage.

10 What is the procedure and documents or information typically required for the purpose of registration of immovable property?

An application for entry of the property right in the land register must be filed with the District Court in whose jurisdiction the immovable property to be registered is located.

The application must be filed in writing and signed by the applicant. In principle, the signature need not be certified unless a registration declaration (*Aufsandungserklärung*) is included in the application.

A public or private document containing the legal grounds for acquisition of the property (e.g. a purchase contract) and bearing the certified signatures of the parties must accompany the application. In addition to the exact details of the property, private documents must include a registration declaration (*Aufsandungserklärung*).

The registration declaration is an explicit declaration of consent to registration (entry in the land register) by the person whose right is being restricted, encumbered, nullified or transferred to another person (the seller, in the case of a purchase contract). The registration declaration must be certified by a court or notary and signed by the contracting party. The registration declaration can also be submitted as part of the application for entry of the property right in the land register. In this case, the signatures on the application must be certified by a court or notary.

A tax compliance certificate (*steuerrechtliche Unbedenklichkeitsbescheinigung*) in line with Section 160 of the Federal Tax Code (*Bundesabgabeordnung*) must also accompany the application. The certificate constitutes confirmation from the Tax Authority that there are no obstacles to entry of the property right in the land register in terms of taxes due.

If the application is drafted by a lawyer or a notary, it must be filed electronically. In this case, the enclosures must be placed in an electronic document archive. The tax compliance certificate from the Tax Authority can then be replaced by a self-assessment declaration drafted by the lawyer or notary.

Last update: 05/06/2023

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