

FOREWORD

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Our thanks for all the helpful input from our colleagues in JURK.

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Karianne Andreassen
Aud Helen Hølmen
Cicilie Ingridrud
Marte Sofie Kjellsvig

This brochure was revised in the spring of 2009 by Anne Berit Foss and Anne Marie Tollehaugen.

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1.0 INTRODUCTION

1.1 The aim of the brochure

Our aim in publishing this brochure is to provide a concise presentation of legal matters that may be of interest in connection with marriage. The objective of the brochure is to draw the reader's attention to the main problems that may arise in this connection and to make the reader aware of her rights.

2.0 ASSETS AND THE SITUATION BETWEEN SPOUSES DURING MARRIAGE

2.1 RIGHT OF DISPOSITION

The basic rule is that spouses have full right of disposition over their own property and assets in marriage, regardless of whether the spouses practice joint ownership or have separate estates. This applies to both the property that is acquired prior to and during the marriage. A spouse thus has the right to, without hindrance, sell, give away and use her/his own property and assets. Conversely, the spouses do not have right of disposition over the other spouse's property/assets. The property owned by a spouse is deemed to be part of the goods encompassed under that spouses actual right of disposition. *(There is no direct equivalent term in English for the Norwegian "rådighetsdel". The nearest one comes is: The part of marital property (community property in marriage (The Norwegian word is "felleseie") over which a spouse has right of disposition including the right to dispose, sell, control or consume in its entirety. In order to avoid confusion this is referred to in the following as property over which ONE spouse has actual right of disposition)*

Limitations on right of disposition

There are certain limitations in the right of disposition. A spouse cannot, without written approval from the other spouse, transfer, mortgage/lien, lease, enter into or terminate a rental/lease agreement for property that is used as a joint dwelling. Without such agreement from the other spouse a spouse cannot transfer or mortgage an ownership share, share or bond/debenture that is linked

to the joint dwelling. This applies regardless of which spouse owns or rents/leases the dwelling.

2.2 Joint ownership

Spouses can, as explained above, dispose freely over their own property. This means that they can among other things agree that the property shall be community property. Community property rights can also arise independently of an agreement. This is due to the special relationship inherent in the state of marriage. Assets/property that has been acquired by both spouses are community property. Community property can also arise through a shared economy, joint payment of joint costs and so forth.

Another way of attaining a share of community property is through work in the home. This is laid down in the Marriage Act § 31 third paragraph, and is sometimes referred to as “housekeeper’s community property”. The rule is that if one spouse is wholly or mostly engaged in work in the home and the other has income earning work, community property is generated over items acquired during cohabitation. The grounds on which community property rights are generated under such circumstances are that the work carried out by the spouse in the home enables the other spouse to acquire earnings, and thus property. This applies in particular to a joint dwelling and the contents thereof, but the rule is not limited to these. The Marriage Act uses the formulation “served the spouses’ common personal use”. This means that the rule can also include leisure property, boats and vehicles.

The right to dispose over community property follows from the usual legal rules for joint ownership. In general

terms this means that has right of disposition of one's own share of the item of property. The limitations in the right of disposition described under section 2.1 above also apply to items of community property.

If the ownership share is transferred as a gift between the spouses, this must be done in the form of a pre- or postnuptial agreement in order to be valid. A pre- or postnuptial agreement must be entered into in writing and be confirmed by two witnesses. If you would like more information on entering into a pre- or postnuptial agreement, you can find this in the brochure "Pre- and postnuptial Agreements", which is available on request from JURK.

2.3 Liability for debts

As a general rule a spouse cannot take up debts that will have the effect of burdening the other spouse.

There are some exceptions to the rule, but these have little or no practical effect.

It is important to note that a spouse cannot take up a loan that commits the other spouse.

2.4 Obligation to contribute to joint maintenance

The spouses have an equal responsibility for the expenses and the work that is necessary to run the joint household and to cover other joint needs, the raising of children and each of the spouse's individual needs. This encompasses expenses incurred in connection with

clothing, entertainment, transport, medical services and similar. The spouses can contribute with money, work in the home or by other means.

Each spouse shall contribute to the best of their ability. The assets held by the individual spouses and income-earning ability will be of import here. Individual assessments must be made on a case-to-case basis.

A spouse can, within reasonable limits demand money from the other spouse to cover the expenses described above. A spouse that fails to put the necessary monies at the disposal of the other spouse, can be ordered by a court of law to pay a fixed sum.

2.5 Obligation to provide information on financial circumstances

Spouses have an obligation to provide each other with all necessary information required to make a full assessment of each other's financial positions. In connection with this a spouse can demand that the other party provides information on or copies of the joint or individual tax returns and assessment. A spouse can also demand information from tax authorities, banks and insurance companies and so forth. Each spouse has this right until the financial settlement after a separation or divorce has been finalised.

3.0 ASSET ARRANGEMENTS

3.1 Introduction

As long as the spouses remain married, agreements on community property ownership or separate estates will be of no import to the partners in marriage. Such matters only become of import when the spouses shall divide the marital estate on dissolution of the marriage or through the death of one of the spouses. More information regarding the last-mentioned is available in the brochure “inheritance”.

3.2 Joint ownership

The main rule

If no agreement has been entered into, the spouses have joint ownership. Joint ownership encompasses the separate estates of both spouses over which they have actual rights of disposition. In other words joint ownership – here also marital property – is the goods and assets each spouse brought into the marriage and the property and assets that the spouses have jointly acquired while married. It is important to emphasise here that such joint ownership does not impose any additional limitations on a spouse’s right to dispose over her/his own property other than that which is mentioned in section 2.1. When the marriage is dissolved, the general rule is that joint ownership shall be divided equally between the spouses after deductions for liabilities.

**Joint
ownership/
Co-
ownership
tenancy**

It is important to be aware that joint ownership is not the same as co-tenancy. (See sub-heading).

The following is a theoretical case to illustrate the difference: Lars and Kari are married. They purchased a dwelling together. They have also purchased a caravan together, but Kari has paid slightly more than Lars. This is “property” or “assets” that are jointly owned by Lars and Kari, but they have different co-ownership shares. Co-ownership shares are part of each of the spouses actual right of disposition of the joint ownership. Lars has purchased expensive fishing tackle and a cabin. Lars owns these items alone, but they form part of his actual right of disposition of the joint ownership. Kari owns her savings and clothes, but these are also encompassed under her actual right of disposition of the joint ownership.

Exemptions

Although the basic rule when dividing joint ownership is that assets shall be split equally, there are important exemptions. One such exemption is “skjevdeling”. *(Translator’s note: there is no direct equivalent in British/US law, and the term is translated here as ‘unequal division’ sic: of a marital estate)* The main rule governing unequal division is that the parties can demand exempted from the division of property the worth of assets that can be clearly identified as resulting from funds that one spouse possessed when the marriage was entered into or has acquired after this time in the form of an inheritance or a gift from others than the other spouse. Read more about this under section 5.4. Other exemptions from dividing joint ownership are dealt with under section 5.3.

3.3 Separate property

The spouses can agree a different arrangement for property/assets than joint ownership. They can agree that the property/assets they own or later acquire shall be exempted from the division. The legal term for this is separate property. An agreement of this type can also be entered into prior to entering into marriage. Such agreements are called marriage settlements in the UK and pre-marital agreements in the USA, also *prenuptial agreements*, and have a defined form. This is discussed in more detail below.

Separate property-variants

An agreement on separate property can apply to both or one of the spouses' property/assets. It can also apply to part of the property/assets, for example so that the dwelling is the sole (separate) property of the wife. The agreement can also be made time-limited or conditioned by that the spouses do not have joint children. The spouses can also decide that separate property shall not apply if one spouse dies, so-called 'divorce separate property'. This type of agreement can also be limited to that a named spouse dies first.

Formal requirements

In order for agreements on separate property to be valid in law, these must adhere to the formal requirements for prenuptial agreements. If the formal requirements are fulfilled, then the agreement will be binding on both spouses and on their heirs. If the agreement is to be binding in relation to the spouses' creditors, it must be registered. (Recorded in the applicable register)

A prenuptial agreement must be made in writing. The spouses must at the same time and in the presence of two witnesses that have been accepted by both spouses, sign the prenuptial agreement or confirm their previous

signatures. The spouses and witness must be present at the same time, and they must be aware that a prenuptial agreement is being entered into. The witnesses must also sign the prenuptial agreement in the presence of the spouses. The witnesses must be of legal age and of sound mind.

**The wish of
the giver or
testator/
testatrix**

A giver or testator/testatrix can decide that a gift or inheritance shall be the recipient's separate property. In the case of an inheritance this must be included as clause in a will, while in the case of a gift it must be decided at the time the gift is made. In the interests of securing evidence, this should also be done in writing in the case of gifts. The recipient cannot change such clauses unless this has been especially agreed or clearly premised by the giver or testator/testatrix.

4.0 PROCEDURES IN CASES OF SEPARATION AND DIVORCE

4.1 Arbitration

Agreements on parental responsibility, visitation rights and fixed place of abode Spouses with joint (or common) children under 16 must attend arbitration prior to the granting of a separation or divorce. The objective of arbitration is to reach agreement on parental responsibility, visitation rights and where the child will live on a permanent basis. Emphasis is placed on the best interests of the child.

Arbitration-attestation After the spouses have reached agreement, an arbitration attestation is issued. If the spouses fail to reach agreement, an arbitration attestation stating that arbitration has been attempted is issued. The arbitration attestation is necessary for the granting of a separation order.

4.2 Separation

Petitions for separation A spouse that does not wish to continue to live with her/his partner can apply for separation. It is not a prerequisite that the other spouse agrees, neither is it necessary to state grounds. Petition forms are available from the Regional Commissioner, and must be sent to the Regional Commissioner in the spouse's county of residence.

A separation has no effect if the spouses continue or restore cohabitation. Cohabitation for an

interim period until the parties move apart and short-term attempts to repair the marriage are of no import.

4.3 Divorce

Divorce after separation or breakdowns in married life Either spouse can demand a divorce when separation has been a fact for more than one year. The same applies if marital relationships have been breached for more than two years.

Divorce on the basis of assault/harassment A spouse can demand a divorce without prior separation if the other spouse has wilfully attempted to kill him, her or the children. The same applies if the other spouse has wilfully exposed them to or inflicted on them grievous harm, or if the spouse has acted in a manner that gives cause for grave fear that such behaviour may incur. Petitions for divorce in such cases must be lodged within certain deadlines. The procedure is unsatisfactory in that it often takes some time for a case to come before the courts.

4.4 The effect of separation and divorce

A separation or divorce comes into effect on the day the Regional Commissioner issues the grant or a court ruling is pronounced, unless otherwise specifically agreed. It is illegal to enter into a new marriage until one is legally divorced.

5.0 DIVISION OF AN ESTATE

5.1 Introduction

Freedom to enter into agreement The spouses have the right to enter into an agreement on the division of the estate. This means that the spouses are free to agree how and when the division is to take place, and which assets and property shall form the basis. If the spouses fail to agree on this, then the provisions of the Marriage Act shall apply.

When one can demand division The earliest point in time a spouse can demand that an estate be divided is when a separation or divorce has been granted. There are a number of other special rules governing when an estate can be divided, but these are of minor practical import.

Cut-off date It is the assets that each of the spouses had at the cut-off date that shall be divided. The cut-off date is as a general rule the date on which the Regional Commissioner received a petition for a separation or divorce, or when marital cohabitation ceased if this was a prior fact. In other words, it is the date on which the petition was received at the Regional Commissioner's office or the date on which the spouses moved apart that is decisive in deciding which assets/property shall be included in the settlement. Assets are calculated as of this date, and the division is made on the basis of the property/assets at that time regardless of what has since occurred in connection with this/these.

Earnings/dividends on assets/property to be

equally divided that accrue after the cut-off date, shall not be included in the division. Liabilities incurred by a spouse after the cut-off date shall be excluded from the division and no deductions are allowed for these.

5.2 Division based on worth

The main rule

The main rule of the Marriage Act is that the spouses' collective assets/property that are jointly owned shall be divided equally after deductions for liabilities. Note that we are now discussing only worth. The actual division of the spouses' assets/property is dealt with in section 5.6. That which is to be excluded from the division is dealt with in section 5.3 et al.

Details of deduction for liabilities

A spouse who has only community assets/property and is not claiming unequal division, can deduct all her/his liabilities in what the spouse owns regardless of the source of the liability.

In cases where the spouses are jointly and severally liable to creditors for debts, they will be liable for the debt with half each or other applicable fraction thereof. It may be that one spouse shall bear the whole debt burden. It may also be that one spouse is liable to pay the creditor alone, but that the spouses agree to bear a part of the debt burden. The spouse that is liable to the creditor has the right to deduct the whole amount. This means that the other spouse is no longer liable for the debt.

Liabilities that a spouse has incurred through the

acquisition of or improvements to joint ownership property can be deducted even if the parties have unequal division assets/property or separate property. Liabilities that a spouse has incurred through the acquisition of or improvements to separate property can only be deducted when the total worth of the separate property and any unequal division assets/property are insufficient to cover the liability. Other debts/liabilities such as education loans and consumer loans can be deducted proportionally.

This is illustrated by the following example: Kari has inherited a cabin from her parents valued at 300 000 kr. Further, she has joint ownership assets/property of 200 000 kr. A prenuptial agreement stipulates that shareholdings of 500 000 kr shall be her separate property. Kari also has an educational loan of 500 000 kr. She thus owns property/assets that are not part of the division worth 800 000 kr (the cabin, 300 000 kr and shareholdings, 500 000 kr), while joint ownership is as said 200 000 kr. The loan debt of 500 000 kr shall be divided “proportionally”. The solution here is that Kari’s “assets” are added up, in our case 1 million kr (800 000 kr that will not be divided and 200 000 kr that is joint ownership). Of this sum the property/assets that are not to be divided are $\frac{4}{5}$ (800 000 kr is $\frac{4}{5}$ of 1 million), and $\frac{4}{5}$ of the debt shall thus be charged to the unequal division and separate property assets/property and $\frac{1}{5}$ shall be charged to the joint ownership assets/property. This means that Kari can deduct 100 000 kr from the joint ownership assets/property (100 000 kr is $\frac{1}{5}$ of the total debt of 500 000 kr).

In short, one can say that in the case of a spouse

who has separate property the basic rule is that the debt shall be deducted from the property/assets to which the debt is linked.

5.3 A spouse can withhold the following property/assets from the division

Personal property

Personal property, for example clothing, jewellery and family photographs from one's own family can be excluded from the division, unless it would be obviously unjust or unfair under the circumstances. It is, however, not sufficient in itself that an item is used solely by one spouse to exclude the item from the division. That the item can only satisfy the needs of one of the spouses can be sufficient. The worth of the item is of no import for whether it can be excluded from the division, but if the item is of high value exclusion may be deemed to be unreasonable.

Social security rights

Rights in a public social security arrangement, rights in a public or private pension scheme, and the right to annuities or life insurance that has no redemption value, can be excluded from the division.

If that one spouse invokes such rights results in the other spouse being unreasonably disadvantaged, she or he can be awarded a sum of money to prevent this. Many misunderstand this and believe that this is a transfer of pension points. When assessing whether compensation is to be awarded emphasis shall be placed on – amongst other factors – the length of the marriage.

Other exceptions

Other possessions and rights that cannot be transferred or that are of a personal nature can be excluded from the division. If the other spouse is unreasonably disadvantaged, she or he can be awarded compensation.

The worth of compensation, social security benefits or insurance that are meant to cover costs and losses of future income in the case of personal injury incurring, can be excluded from the division. The same applies to damages, industrial injury insurance and damages for pain and suffering etc. It is a precondition that the assets/property have been retained. If the said items have been retained due to the efforts of the other spouse, the amount can be reduced.

Payments made by employers in connection with termination of employment or early retirement can also be kept apart from the settlement in accordance with the rules applicable to compensation and social security benefits.

The spouse who will have the child/children living at home on a permanent basis can demand possession of items that are used in connection with caring for a child.

5.4 Unequal division

**Assets/
property
that can be
excluded**

A spouse that brings assets/property into the marriage can demand that these are kept apart from the division. Inheritance or gifts from others than a spouse can also be kept apart, even if these have been acquired during the marriage. This is

known as unequal division. Property acquired during a previous cohabitation will therefore be the basis for unequal division. If the spouses have resumed marital life after a separation and division has been executed, one can demand that the personal possessions after the division are unequally divided.

Conditions Unequal division is not an automatic function, it must be demanded. Further, it is precondition for unequal division that worth can be traced back to the assets/property in question. If the assets/property have been exchanged for other permanent assets/property, they will nonetheless be deemed to have been retained. The person demanding unequal division must prove this. This can often prove difficult in practice.

Net worth Unequal division is a rule of worth and does not impart the right to exempt specific personal property. The demand for unequal division is calculated on the basis of the total worth minus liabilities. It is this net worth that one can demand unequally divided. This means that if one spouse's liabilities were greater than her/his assets on entering into the marriage, this will as a general rule exclude unequal division of the value.

Thus the unequal division rule does not protect inheritance of gifts that were present prior to entering into marriage if one enters into marriage with liabilities that are greater than assets. In order to avoid equal division in such cases the testator/testatrix must have established a will & testament that designates the inheritance as separate property. In the case of inheritance or gifts acquired during the marriage, the right of

unequal division will still apply, even if the spouse had greater liabilities than assets when entering into marriage.

Mixed economies

Most marriages have mixed economies. This can make it difficult to prove that a demand for unequal division is justified. Strict standards are imposed both where economies are mixed, and the burden of proof is strictly imposed in cases where for example unequal division property has been mixed or improved, and where assets have been exchanged. A mixing of unequal division property and other assets/property is in itself an argument for equal division. Unequal division is nonetheless not excluded, but the burden of proof is strict.

Changes in value

It is the actual value of the assets/property that forms the basis. Changes in value are both to the benefit and disadvantage of the owner. If value has been increased by the efforts of both spouses during the marriage, for example the rehabilitation of the bathroom, the increase in value shall be deducted in unequal division. An increase in value that is solely a result of the owning spouse's efforts shall also be kept apart from unequal division, unless costs incurred were paid from other assets that the owning spouse can divide unequally. Earnings/dividends on unequal division assets, for example interest and share dividends can also be divided unequally. The precondition is of course that the assets are still present.

If there is joint ownership, and the assets/property cannot be unequally divided, they must be divided equally.

Cohabitation prior to marriage

Assets/property acquired during a pre-marriage cohabitation can be subject to unequal division.

Limitations in the right to unequal division

If unequal division will result in an obvious disadvantageous result for the other spouse, the right to unequal division can be limited or no longer apply. In the assessment, emphasis shall be placed on the length of the marriage and the work put in by the spouses for the family. This rule of exemption is strictly interpreted. The courts will consider each case on its individual merits. The spouse opposing unequal division has the burden of proof that this will be clearly unfair.

Further, the right to unequal division does not apply if a spouse is in possession of an undivided estate.

One can also agree to relinquish the right of unequal division through for example prenuptial agreement.

Extension of the right to unequal division in special cases

If there are strong grounds for this, a spouse is awarded the right to unequal division of joint ownership property that cannot otherwise be unequally divided. This can for example that one spouse is running a single proprietorship that would have to declare bankruptcy, if the value in the company was to be equally divided. This rule of exemption is strictly interpreted. The courts will also deal with such cases on a case-by-case basis.

5.5 Separate property

Items that are separate property are also exempted from the division, i.e. shall not be included in the settlement. If the spouses have totally separate property, each spouse retains his/her property in the settlement. In the case of partial separate property, items that are separate property are not included, while the remainder of the assets/property is divided in accordance with the rules on joint ownership.

Claims for compensation

If one spouse has used community assets/property to increase the worth of her/his separate property, the other spouse can claim compensation. It is only possible to claim compensation if the other spouse has remaining funds after liabilities have been deducted. Compensation can be paid in instalments.

If by contributions to the upkeep of the family through work or by other means a spouse has to a substantial degree contributed to increasing the worth of the other spouse's separate property, compensation may also be awarded.

5.6 Distribution in kind

Own property

Both spouses have the right to keep assets/property and rights that the spouse has sole ownership rights to or holds a majority share in, providing that this will not produce an obviously unfair result. A spouse can also demand to take over an item of property that is jointly owned, providing that the spouse can prove majority

ownership. If one has ownership of more than approximately 75 %, one is deemed to own a majority part. When assessing whether full ownership will lead to an unreasonable or unfair result, the court will consider the other spouse's interest in taking over the item.

Shared dwelling and household goods

A spouse can claim the right to take over the previous shared dwelling and household goods when special grounds speak for this. This applies without regard to the previous ownership model. When assessing this, emphasis shall be placed on the best interests of the children and the spouse. The requirement for special grounds is not strict. It is usually sufficient that a spouse can show that she/he has a greater need for the dwelling than the other spouse. In such cases the spouse who will have the children living with her/him on a permanent basis is usually in a strong position. If a spouse has inherited the dwelling or has received it as gift from his/her family, the other spouse cannot claim the right to take it over. This is an important rule in practice. The same applies if the spouse has allodial privilege to the property.

Usage rights/beneficial rights

Even if one spouse takes over the dwelling, the other spouse can be awarded right of usage or beneficial rights. This applies to all types of dwellings, including inherited property. The assessment as to whether such rights shall be granted shall take into account the needs of the children and the spouse. Usage/beneficial rights can be time-limited, but shall be awarded for the period of time necessary, typically until the children leave home.

Rent in

Many people are unaware that the owning spouse

cases of usage/beneficial rights can demand rent for the dwelling from the spouse that has usage/beneficial rights. Rent shall be the market norm, unless the spouses have agreed otherwise.

Rent in cases when the dwelling is a co-ownership between the spouses Where the dwelling is co-owned by the spouses, the spouse that moves out can demand rent from the other spouse. If rent is demanded, then the fixed costs shall be split equally between the spouses. The rent is fixed proportionally on the basis of the spouses' ownership parts.

Rent is charged from the point in time the demand for this was lodged. The demand cannot be lodged until the spouse has vacated the dwelling. In order to secure documentary evidence the demand should be made in writing.

Valuation If the spouses cannot agree on the worth of an item/property, the worth shall be stipulated by an appraisalment of the marital estate. This is relatively expensive, and it is thus to the advantage of the spouses to agree to let an appraiser value the item. The value shall be the same as the item's saleable worth.

If a spouse keeps property that is his/her sole property, the value shall be that which was applicable on the cut-off date. This means one bears the risk for fluctuations in value after this date. If the spouses divide the estate under judicial administration, and a spouse takes over an item that he/she did not previously solely own, then the value at the accounting date shall form the basis. The accounting date is the date on which the probate court transfers the dwelling or item of property to the spouse. If the spouses divide the estate privately, the cut-off date shall

be the date on which it was agreed who was to have the item. You can read more about judicial administration and private administration in section 6.3.

Payment

In some cases a spouse will take over items of property that will exceed the value of that which the spouse shall have after the equal financial division. In such cases the spouse shall pay the excess to the other spouse so that a genuine division is achieved.

If a spouse takes over fixed property or similar, for example a flat in a housing co-operative, and must buy out the other spouse, the last-mentioned must make do with a receivable with surety in the property or tenancy rights. Either spouse can cancel the receivable by giving six months notice. If a spouse is awarded usage rights to the other spouse's property, the receivable cannot be cancelled for as long as the usage rights are in force.

Sale of the spouse's property

Property that is not taken over by of the spouses, either spouse can demand sold on the open market. Private correspondence and other items that would cause distress if sold to third parties are excluded from sale to third parties.

Either spouse can demand that the sale is executed through the enforcement authorities in accordance with the regulations that govern forced sale. The simplest and best solution is of course that the parties agree and sell the property without intervention of the enforcement authorities, for example the sale of a dwelling through the offices of an estate agent. Both spouses have pre-emptive purchase rights under

the same terms.

5.7 Costs incurred in the break up of marital relations until the division is finalised

From the break up of the marital relationship and until the division is finalised, costs shall be paid by the spouse who owns the property to which the costs are linked. If the property is community property both spouses are liable for the costs. The same applies to a shared dwelling, but such that the spouse that retains residence can be charged rent by the other spouse, see section 5.6.

6.0 OTHER MATTERS

6.1 Contributions from a spouse

Obligation to contribute to joint maintenance During the marriage the spouses have an equal obligation to contribute to joint maintenance, see section 2.4. When the marriage is under separation or dissolved through divorce, the main rule is that this obligation no longer applies. The same applies in cases of marital breakdown.

Contributions If the ability and opportunity of a spouse to provide sufficient sustenance as a result of the provision of care for joint children or the division of shared tasks during the marriage, the other spouse can be ordered to pay a contribution if there are substantial grounds for this.

The spouses can enter into an agreement on contributions. If the spouses fail to agree on such contributions, then either spouse can demand that the matter be put before the ordinary courts for settlement. If both parties so wish the matter can be decided by the child maintenance authority. The spouses can demand a ruling on the matter, even if there is a previous agreement between the spouses. Further, either spouse can demand that a contribution that has been fixed by the child maintenance division or courts is changed or repealed if there are substantial grounds for demanding this.

Time limitations on contributions Contributions are stipulated for a finite period of up to three years. If there are substantial reasons for this, contributions can be ordered for an extended period or without time limitation.

Contributions can be ordered to apply for a period of up to three years prior to the date on which the demand was put forward to the child maintenance division or court. As a general rule the contribution is ordered in the form of consecutive payments. In certain cases a contribution in the form of a single lump sum may be ordered.

The right to receive compensation is lost if the recipient enters into a new marriage or the payor dies.

6.2 Temporary orders/rulings on separation, usage rights, contributions and visitation bans

A spouse can petition a court to pronounce a temporary ruling on separation, the right to contributions, or usage rights to dwelling and household goods in the shared home. Such temporary orders/rulings can also be made prior to separation being petitioned for or a petition for divorce is raised, but this must be on the basis of special reasons. Unless otherwise stated a temporary order/ruling applies until the question of separation, contributions or usage rights has been made legally enforceable.

6.3 Private and public division of the estate (in marriage)

The division of the spouses' assets/property can be done privately or by a public body. The same rules apply to both private and public division. As mentioned in section 5.1 the parties can enter into

an agreement on division regardless of the provisions of the Marriage Act.

**Private
division**

If the spouses choose private division, they shall make the arrangements for the division and implementation of this themselves. The Marriage Act has no rules regarding the implementation of the division. The agreement reached concerning the division should nonetheless be formulated in writing in order to avoid any later disputes arising. There is an example of an agreement on division in section 6.4.

The spouses can decide whether they wish to ask for assistance in dealing with the division, either by employing the services of lawyers or other legal advisors.

**Public
division**

Public division is undertaken by a court of law (usually a probate court) in response to a petition from one or both spouses. If one spouse wishes to invoke public division, the other spouse cannot prevent this. The court will clarify the unresolved matters between the parties and finalise the division by distributing the assets/property.

The court does not bear liability for the spouses' assets/property while the division is being processed. The spouses are in other words still in possession of their assets/property. This rule can be exempted if there are grounds to assume that one spouse will attempt to withhold assets/property from the division, or by other means make it difficult for the other spouse's rights to be fulfilled. In such cases the affected spouse can demand a temporary order or ruling so that the said assets/property are/is secured.

A public division (of a marital estate) can be very costly. A fee equal to 25 times the standard court fee must be paid prior to the court (usually the probate court) implementing a public division. The lawyers' fees incurred by the parties must also be paid. The court fee is adjusted upwards annually. The Regional Commissioner can provide information regarding court fees.

Preparatory court hearing If the spouses fail to agree on the division, it can be a practical option to petition for public division and to request the court to arrange a preparatory court hearing. In this option the judge will dedicate time to arbitrating between the parties. Many cases are resolved at this level. Preparatory court meetings cost roughly one-tenth of a full public division.

Discretionary adjustment of unreasonable or unfair agreements If an agreement on division (settlement agreement) is deemed to have an unreasonable adverse effect on one of the parties, the agreement can be set aside in whole or part by the courts. Instead of setting aside the agreement, the courts may instead rule that the adversely affected spouse can be awarded a sum from the other spouse. Petitions must be lodged within three years from the date the agreement was signed. The earlier a petition is lodged the better chance one has of succeeding with the plea.

6.4 Example of a marital settlement and settlement agreement

6.4.1 The facts

The following is a theoretical settlement. We have tried to illustrate how the financial settlement is arrived at and then how assets/property can be divided.

Lars and Kari married in 1975. They are now separated, and the marital estate is to be divided.

In 1980 the spouses jointly bought a house for kr 500 000. The purchase was in part financed by Kari investing a gift of kr 50 000 she had received from her mother and partly by a loan for which the spouses are jointly and severally liable. At the cut-off date the house was valued at kr 2 000 000. The outstanding debt is kr 300 000.

Kari's unequal division assets/property is, due to the gift from her mother, 10 % of the value of the house at the cut-off date, i.e. kr 200 000. The amount to be equally divided is thus kr 1 800 000.

Over the years Lars and Kari have owned a number of different cars. Their current car was worth kr. 200 000 at the cut-off date. The outstanding debt is kr 100 000. The spouses have joint ownership of the car and are jointly and severally liable for the loan.

In 1990 Kari inherited a cabin from her father. Her father's will stipulated that the cabin was to

be her separate property. At the cut-off date the cabin was worth kr 500 000. Kari has taken up a loan to refurbish the cabin. The outstanding debt is now kr 200 000.

In 1990 Lars purchased a painting from an artist friend. At the cut-off date the painting was worth kr 50 000. During the early years of the marriage Lars was studying. At the cut-off date he has an residual educational loan of kr 100 000.

6.4.2 Division of assets/property

Kari's assets	Worth in kr	
Items that can be excluded	200 000	Unequal division items
	500 000	Separate property items, cabin
Debts linked to separate property	-200 000	Debt on cabin
Community assets/property	900 000	Half of house minus Kari's unequal division items
	100 000	Half the car
Debts linked to community assets/property	-150 000	Half the debt on the house
	-50 000	Half the debt on the car
<i>For division on Kari's side</i>	800 000	

Lars' assets	Worth in kr	
Community assets/property	900 000	Half of house minus Kari's unequal division items
	100 000	Half the car
	50 000	The painting
Debts linked to community assets/property	-150 000	Half the debt on the house
	-50 000	Half the debt on the car
	-100 000	Educ. Loan
<i>For division on Lars' side</i>	750 000	

This can also be displayed as follows:

Item	Total amount	Kari		Lars	
		Joint ownership	Separate property Unequal division items	Joint ownership	Separate property Unequal Division items
House	2 000 000	900 000	200 000	900 000	
Car	200 000	100 000		100 000	
Cabin	500 000		500 000		
Debts					
House	- 300 000	-150 000		- 150 000	
Car	-100 000	-50 000		- 50 000	
Cabin	-200 000		-200 000		
Educ. Loan	-100 000			-100 000	
Net worths		800 000	500 000	750 000	

Kari has kr 800 000 for division and Lars has kr 750 000. Kari's unequal division items and separate property are not incorporated.

The spouses shall each have community assets/property of kr 775 000. One arrives at this sum by adding the amounts from each of the spouses and dividing by two:

$$800\,000 + 750\,000 = \underline{1\,550\,000}$$

$$1\,550\,000 : 2 = \underline{775\,000}$$

In addition Kari shall have unequal division items worth kr 200 000.

$$775\,000 + 200\,000 = \underline{975\,000}.$$

She shall also have kr 300 000 in net separate property items.

$$975\,000 + (500\,000 - 200\,000) = \underline{1\,275\,000}$$

The total Lars will receive is kr 775 000, and Kari will receive kr 1 275 000.

6.4.3 Division in kind

With regard to joint ownership items Lars and Kari agree that Lars will take over the house. He will also take over the loan on the house. Kari will take over the car and the debt owed on this. The couple otherwise keep their own private property.

Lars takes over	Worth of item in kr	Kari takes over	Worth of item in kr
House	2 000 000		
Painting	50 000	Car	200 000
Debt, house	- 300 000		
Educ. Loan	- 100 000	Debt, car	- 100 000
Takes over total	1 650 000	Takes over total	100 000

Lars takes over community assets/property worth kr 1 650 000. Kari takes over community assets/property worth kr 100 000. Lars buys Kari out with kr 875 000. Lars thus has kr 775 000, which was the sum he was to have after the equal financial division.

Kari thus receives kr 975 000. This is her community assets/property and unequal division items. She also keeps separate property with associated debt. She thus has total assets/property worth kr 1 275 000.

6.4.4 Settlement agreement

The following is an example of a (marital estate) settlement agreement.

Settlement agreement

The following agreement has been entered into on this day between Kari Nordmann, date of birth (date) and Lars Nordmann, date of birth (date):

1. Lars Nordmann takes over the dwelling with the address Lillevikveien 2, 1234 Lillevik, land register number 3, plot number 25. Cost incurred in the transfer of the property shall be paid by Lars Nordmann.
2. Lars Nordmann assumes sole liability for the loan on the dwelling, loan number 1234 55 6789. Costs incurred in transferring the loan shall be paid by Lars Nordmann. The parties shall otherwise retain their personal debts.
3. Kari Nordmann takes over the car, registration number AB 12345 and the debt on this.
4. The spouses shall retain their separate, private bank accounts in their own names.
5. Kari Nordmann keeps the cabin.
6. Lars Nordmann pays out Kari Nordmann with kr. 875 000 by (date).

7. Furnishing, fittings and chattels shall be divided amongst the parties under a separate agreement.

In implementing this agreement the marital estate between Kari Nordmann and Lars Nordmann is deemed to have been divided with final and legal effect and the parties have no further claims against each other in connection with the settlement. This agreement is signed in 2 - two-original copies of which each party keeps one.

Place/date

Kari Nordmann

Lars Nordmann

7.0 SOURCES

Holmøy, Vera and Lødrup, Peter. *Ekteskapsloven og enkelte andre lover med kommentarer*, 2. utg. Oslo, 2001.

Lødrup, Peter. *Familieretten*, 3. utg. Oslo, 1997.

Norsk lovnøkkel nr. 5 Ekteskapsloven, ved Asbjørn Strandbakken, Ad Notam Gyldendal, 1995.

Sverdrup, Tone: *Stiftelse av sameie i ekteskap og ugift samliv*, Universitetsforlaget 1997.