

The equalisation of accrued gains in divorce - Family law

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Dusseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London - www.grprainer.com/en conclude: If spouses do not opt for any particular property regime or conclude a marriage contract, they will find themselves in the statutory matrimonial property regime of the community of accrued gains.

In the event that the spouses' community of accrued gains comes to an end, this property regime shall effect an equalisation of accrued gains in accordance with the provisions of the German Civil Code (BGB). The accrued gains represent the difference by which the final assets exceed the spouses' original assets. The accrued gains are always a sum of money and cannot also be negative. If a negative amount is ascertained when calculating the equalisation of accrued gains, the accrued gains will be treated as nil.

The spouses' original assets are those which the spouses possess upon entering the community of accrued gains. This is regularly the marriage date, but it can also be another point in time under certain circumstances. Liabilities of the relevant spouse at the time the marriage took place are to be deducted from the original assets.

The final assets are the amount remaining to the respective spouse at the end of the property regime after their existing liabilities have been deducted.

It is typically the spouse who had less accrued gains during the time of the marriage that receives the equalisation compensation, which consists in half of the excess accrued gains of the other spouse beyond those of the former. This is a matter of a claim for equalisation targeted at money.

Thus, the respective accrued gains must normally first of all be ascertained, on the basis of which the excess occurs by deducting the smaller accrued gain from the larger. The claim for equalisation is then calculated by an equal split of the accrued gains.

The spouses can nevertheless also reach alternative agreements on the equalisation of accrued gains during divorce proceedings. However, this gives rise to the obligation to notarise the agreements or have them logged by the competent family court.

Agreements are frequently reached even prior to the marriage date or during the marriage, for instance by means of a marriage contract or divorce settlements.

The equalisation of accrued gains is a complex matter and should not be underestimated. It is often difficult to identify which assets are included and which aren't and therefore to ascertain one's own assets.

An experienced lawyer can assist in preparing the relevant asset balance sheets, calculating the equalisation compensation or, even before all that, reaching agreements regarding the equalisation of accrued gains.

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Anlage: Bild

