

**Married in Estonia –
‘internationally’**

Eve Pötter
Notary of Paide
eve.potter@notar.ee

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3 matrimonial property regimes

1. Community property regime

- Community property - property obtained during the marriage in equal shares. Transactions are void if made without the consent of both spouses.
- Separate property of a spouse - property obtained before the marriage, without considerations, by donation or by succession. May be disposed freely, no consent of the other spouse is needed.
- Rules on the protection of home - transactions with separate property of one of the spouses, which is used as a family home or as home by the other spouse are void if conducted without the consent of the other spouse.

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3 matrimonial property regimes

2. Regime on community of accrued gains

- All the property is separate property and may be disposed freely. No need for the consent of the other spouse.
- Rules on the protection of home - transactions with separate property of one of the spouses, which is used as a family home or as home by the other spouse are void if conducted without the consent of the other spouse.

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3 matrimonial property regimes

3. Regime on separation of property

In property questions spouses are treated as not married.

- All the property is separate property and may be disposed freely. No need for the consent of the other spouse.
- No rules on the protection of home.

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Matrimonial property agreement

- Choice on property regime must be made on the conclusion of a marriage (no need for agreement).
- Choice may be amended anytime during the marriage by matrimonial property agreement concluded in person and authenticated by notary.
- Matrimonial property agreement has legal effect with regard to a third person only if it is entered into the matrimonial property register or the third person was aware of the agreement.
- Matrimonial property registry is public and free of charge.
- Foreign agreements on choice of applicable law may be registered.

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Estonian PIL rules

Unless chosen by the spouses, the applicable law to their matrimonial property is:

1. the law of the state of the common residence at the time the marriage is concluded, failing that
2. the law of the state of the common nationality, failing that
3. the law of the state of their last common residence, if one still resides there, failing that
4. the law of the state with which the spouses are otherwise most closely connected.

See Article 26(1) of the Regulation 2016/1103/EU.

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Estonian PIL rules

The spouses may choose that the applicable law to their matrimonial property is:

- the law of the state of residence of one of the spouses, or
- the state of nationality of one of the spouses.

See Article 22(1) of the Regulation 2016/1103/EU.

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The hierarchy of laws!

1. International agreements e.g. on Legal Aid

PIL rules may be completely different from national rules. The applicable law may be:

- common place of residence (changes when spouses move),
- location of immovable property but common place of residence for movable property (applicable law depends from the type and location of property),
- common nationality,
- location of the court (no common nationality, no common place of residence).

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The hierarchy of laws!

International agreements such as Agreements on Legal Aid fail legal certainty.

Poland has concluded Legal Aid agreements with:

- **EU:** Austria, Belarus, Bulgaria, Czech Republic, Slovakia, Estonia, France, Croatia, Slovenia, Lithuania, Latvia, Romania, Hungary.
- **NO EU:** Bosnia and Hercegovina, Montenegro, North Macedonia, Democratic People’s Republic of Korea, Cuba, Mongolia, Russia, Ukraine, Vietnam.

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The hierarchy of laws!

2. EU law

- Regulation 2016/1103/EU on matters of matrimonial property (29.01.2019).
- Which countries must apply (*renvoi*)?

3. National law

- Different from country to country.

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Is it the obligation of the notaries to advise clients on private international law rules?

E.g. in cases where they are obliged to establish the existence of a marriage in transactions related to:

- conclusion of a marriage,
- divorce,
- conclusion of a matrimonial property agreement,
- transactions related to real estate or shares,
- conclusion of a succession agreement or a will,
- succession,
- division of the community property
- other.

Facts derived from parties declarations, registry data and documents may refer that PIL rules should be looked at.

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Thank you!

eve.potter@notar.ee

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