

# **German Civil Code Volume II = Bürgerliches Gesetzbuch (BGB)**

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possession of a thing that belongs to such a trade or business.

solchen Erwerbsgeschäft gehörenden Rechts oder des Besitzes einer dazu gehörenden Sache entstehen.

§ 1463 and § 1464 correspond to § 1441 and § 1142, respectively. The explanations there apply accordingly. 1

### § 1465 Costs of litigation

(1) As between the spouses, the costs of a legal dispute that the spouses conduct against each other are borne by the spouse who is to bear them under general provisions of law.

(2) <sup>1</sup>If a spouse conducts a legal dispute against a third party, the costs of the legal dispute, as between the spouses, are borne by the spouse who conducts the legal dispute. <sup>2</sup>However, the costs are borne by the marital property if the judgment takes effect against the marital property or if the legal dispute relates to a personal matter or a marital property obligation of the spouse and the disbursement of the costs is appropriate in the circumstances; § 1463 no. 3 and § 1464 are unaffected.

§ 1465 corresponds to § 1443, which applies to sole management. While § 1443 only applies to the non-managing spouse, § 1465 applies to both spouses. The explanations to § 1443 apply accordingly. 1

### § 1466 Costs of the advancement of a child that is not a child of the spouses

As between the spouses, the costs of the advancement of a child that is not a child of the spouses are borne by the father or mother of the child.

§ 1466 corresponds to § 1444 (applicable to a community of property with sole management). The rule expressed in this provision concerning non-joint children also applies to joint management communities of property: advances (for the term, see § 1624) must be borne internally by the spouse from whom these children are descended. 1

### § 1465 Prozesskosten

(1) Im Verhältnis der Ehegatten zueinander fallen die Kosten eines Rechtsstreits, den die Ehegatten miteinander führen, dem Ehegatten zur Last, der sie nach allgemeinen Vorschriften zu tragen hat.

(2) <sup>1</sup>Führt ein Ehegatte einen Rechtsstreit mit einem Dritten, so fallen die Kosten des Rechtsstreits im Verhältnis der Ehegatten zueinander dem Ehegatten zur Last, der den Rechtsstreit führt. <sup>2</sup>Die Kosten fallen jedoch dem Gesamtgut zur Last, wenn das Urteil dem Gesamtgut gegenüber wirksam ist oder wenn der Rechtsstreit eine persönliche Angelegenheit oder eine Gesamtgutsverbindlichkeit des Ehegatten betrifft und die Aufwendung der Kosten den Umständen nach geboten ist; § 1463 Nr. 3 und § 1464 bleiben unberührt.

### § 1466 Kosten der Ausstattung eines nicht gemeinschaftlichen Kindes

Im Verhältnis der Ehegatten zueinander fallen die Kosten der Ausstattung eines nicht gemeinschaftlichen Kindes dem Vater oder der Mutter des Kindes zur Last.

## § 1467

**Equalisation between reserved property, separate property and marital property**

(1) If a spouse applies marital property to his reserved property or his separate property, he must reimburse to the marital property the value of the property applied.

(2) If a spouse applies reserved property or separate property to the marital property, he may require compensation from the marital property.

## § 1467

**Ausgleichung zwischen Vorbehalts-, Sonder- und Gesamtgut**

(1) Verwendet ein Ehegatte Gesamtgut in sein Vorbehaltsgut oder in sein Sondergut, so hat er den Wert des Verwendeten zum Gesamtgut zu ersetzen.

(2) Verwendet ein Ehegatte Vorbehaltsgut oder Sondergut in das Gesamtgut, so kann er Ersatz aus dem Gesamtgut verlangen.

- 1 § 1467 corresponds to § 1445. The explanations there apply accordingly.

## § 1468

**Due date of the equalisation claim**

Whatever a spouse owes to the marital property or whatever he owes to the reserved property or separate property of the other spouse he need not pay until after the termination of the community of property; but to the extent that the reserved property and the separate property of the debtor are sufficient, he must discharge the debt before this.

## § 1468

**Fälligkeit des Ausgleichsanspruchs**

Was ein Ehegatte zum Gesamtgut oder was er zum Vorbehaltsgut oder Sondergut des anderen Ehegatten schuldet, braucht er erst nach Beendigung der Gütergemeinschaft zu leisten; soweit jedoch das Vorbehaltsgut und das Sondergut des Schuldners ausreichen, hat er die Schuld schon vorher zu berichtigen.

- 1 § 1468 corresponds to § 1446(2). The explanations there apply accordingly.

## § 1469

**Application for termination**

Each spouse may apply for the termination of the community of property,

1. if his future rights may be substantially endangered as a result of the fact that the other spouse, without his cooperation, undertakes acts of management that may be undertaken only jointly,

2. if the other spouse, without adequate cause, persistently refuses to cooperate in the proper management of the marital property,

3. if the other spouse has violated his duty to contribute to the family maintenance and a substantial endangerment of the maintenance is to be feared in the future,

4. if the marital property is over-indebted by obligations that arose as personal obligations of the other spouse, and are borne by the latter as between the spouses, to such an

## § 1469

**Aufhebungsantrag**

Jeder Ehegatte kann die Aufhebung der Gütergemeinschaft beantragen,

1. wenn seine Rechte für die Zukunft dadurch erheblich gefährdet werden können, dass der andere Ehegatte ohne seine Mitwirkung Verwaltungshandlungen vornimmt, die nur gemeinschaftlich vorgenommen werden dürfen,

2. wenn der andere Ehegatte sich ohne ausreichenden Grund beharrlich weigert, zur ordnungsmäßigen Verwaltung des Gesamtguts mitzuwirken,

3. wenn der andere Ehegatte seine Verpflichtung, zum Familienunterhalt beizutragen, verletzt hat und für die Zukunft eine erhebliche Gefährdung des Unterhalts zu besorgen ist,

4. wenn das Gesamtgut durch Verbindlichkeiten, die in der Person des anderen Ehegatten entstanden sind und diesem im Verhältnis der Ehegatten zueinander zur Last fallen,

extent that its later acquisition is substantially endangered,

5. if the exercise of a right of the other spouse that arises from the community of property falls under the area of responsibilities of a custodian.

in solchem Maße überschuldet ist, dass sein späterer Erwerb erheblich gefährdet wird,

5. wenn die Wahrnehmung eines Rechts des anderen Ehegatten, das sich aus der Gütergemeinschaft ergibt, vom Aufgabenkreis eines Betreuers erfasst wird.

## § 1470

### Effect of the judicial termination decision

(1) When the judicial decision becomes final and absolute, the community of property is terminated; separation of property applies for the future.

(2) Against third parties, the termination of the community of property is effective only under § 1412.

## § 1470

### Wirkung der richterlichen Aufhebungsentscheidung

(1) Mit der Rechtskraft der richterlichen Entscheidung ist die Gütergemeinschaft aufgehoben; für die Zukunft gilt Gütertrennung.

(2) Dritten gegenüber ist die Aufhebung der Gütergemeinschaft nur nach Maßgabe des § 1412 wirksam.

§§ 1469 et seq. correspond to §§ 1447, 1449 applicable to a community of property with sole management. Like these provisions § 1469 contains an exhaustive list of the reasons for which an application for termination can be made. § 1470 then regulates the effects of the judicial termination decision. For other reasons for termination, see Introduction to §§ 1447–1449. 1

**Reasons** for termination are: the substantial endangerment of the rights of one spouse for the future due to the fact that the other spouse carries out management acts without his involvement which may only be undertaken jointly (No. 1), the persistent refusal of the other spouse without adequate cause to take part in proper management to contribute to the marital property (No. 2). To that extent a constant refusal is necessary, the refusal in individual cases is not sufficient, but only leads to the substitution of the approval by the family court (§ 1452). Furthermore, the termination of the community of property can be applied for if the other spouse has violated his obligation to contribute to the family maintenance and there is a significant risk of lack of maintenance for the future (No. 3, corresponds to § 1447 No. 2), if the marital property is over-indebted to such an extent that his later acquisition is substantially endangered by liabilities that have arisen in the person of the other spouse and are a burden to the other spouse in relation to each other (No. 4, corresponds to § 1447 No. 3 and § 1448) and if the exercise of a right of the other spouse resulting from the community of property is covered by the responsibilities of a custodian (No. 5, corresponds to § 1447 No. 4). Insofar as there is an overlap with §§ 1447 et seq., the explanations relating to these provisions apply accordingly. 2

The comments under § 1447 on the procedure and under § 1449 with regard to the consequences of the judicial termination decision apply accordingly. 3

## Subchapter 4

### Partitioning of the marital property

## Unterkapitel 4

### Auseinandersetzung des Gesamtguts

## Introduction to §§ 1471–1482

§§ 1471–1482 regulate the question of how the marital property is to be dealt with when the community of property ends. §§ 1471–1473 apply to the period from the termination of the community of property until the dispute finalised, while §§ 1474–1481 relate to the dispute itself. § 1482 contains a special regulation for the termination of the property regime 1

through death. Unless they contain any special regulations, §§ 741 et seq. apply in addition to §§ 1471 et seq. §§ 1471 et seq. do not apply where there is a continued community of property (§§ 1483 et seq.).

## § 1471

**Beginning of the partitioning**

(1) After the termination of the community of property, the spouses partition the marital property.

(2) Until the partitioning, the provisions of § 1419 govern the marital property.

## § 1471

**Beginn der Auseinandersetzung**

(1) Nach der Beendigung der Gütergemeinschaft setzen sich die Ehegatten über das Gesamtgut auseinander.

(2) Bis zur Auseinandersetzung gilt für das Gesamtgut die Vorschrift des § 1419.

**A. Function**

- 1 § 1471 establishes the rule that at the end of the community of property,<sup>1</sup> each spouse has a right to partition the marital property (Sub. 1), unless if (on termination by death) the community of property is continued with the heir (§§ 1483 et seq.).

**B. Explanation**

- 2 If the community of property comes to an end due to death, it must be taken into account that there can be a **double joint ownership**: first, the joint property resulting from the marital joint property and then the inheritance resulting from the inheritance. It follows from this that the subject of the estate is initially only the total ownership share of the total property itself. Individual items only become part of the estate after the collective property has been dealt with. From this, in turn, it follows that the partition of the marital property must precede that of the estate.
- 3 Until the partition arises, the community of property continues to exist as a community in liquidation (*Liquidationsgemeinschaft*) (see Sub. 2, § 1419). New assets and new debts of the spouses are no longer included in the marital property (exception: § 1473). The management may have been modified compared to what was previously in force as § 1472 orders the joint management of the marital property for the time up to the dispute.
- 3 With the end of the community of property, the attachment of the share of the marital property becomes permissible (§ 860(2) ZPO).

## § 1472

**Joint management of the marital property**

(1) Until the partitioning, the spouses manage the marital property jointly.

(2) <sup>1</sup>Each spouse may manage the marital property in the same way as before the termination of the community of property until he obtains knowledge of the termination or ought to know. <sup>2</sup>A third party may not rely on this if, when he enters into a transaction,

## § 1472

**Gemeinschaftliche Verwaltung des Gesamtguts**

(1) Bis zur Auseinandersetzung verwalten die Ehegatten das Gesamtgut gemeinschaftlich.

(2) <sup>1</sup>Jeder Ehegatte darf das Gesamtgut in derselben Weise wie vor der Beendigung der Gütergemeinschaft verwalten, bis er von der Beendigung Kenntnis erlangt oder sie kennen muss. <sup>2</sup>Ein Dritter kann sich hierauf nicht berufen, wenn er bei der Vornahme eines

<sup>1</sup> For the reasons, see → Introduction to §§ 1447–1449 mn. 1.

he knows or ought to know that the community of property has ended.

(3) Each spouse is obliged to the other to cooperate in measures that are necessary for the proper management of the marital property; each spouse may take the measures that are necessary for preservation alone.

(4) <sup>1</sup>If the community of property ends as the result of the death of one spouse, the surviving spouse must carry out the transactions that are necessary for proper management and may not be postponed without risk until the heir can make other provision. <sup>2</sup>This duty does not exist if the deceased spouse managed the marital property alone.

Rechtsgeschäfts weiß oder wissen muss, dass die Gütergemeinschaft beendet ist.

(3) Jeder Ehegatte ist dem anderen gegenüber verpflichtet, zu Maßregeln mitzuwirken, die zur ordnungsmäßigen Verwaltung des Gesamtguts erforderlich sind; die zur Erhaltung notwendigen Maßregeln kann jeder Ehegatte allein treffen.

(4) <sup>1</sup>Endet die Gütergemeinschaft durch den Tod eines Ehegatten, so hat der überlebende Ehegatte die Geschäfte, die zur ordnungsmäßigen Verwaltung erforderlich sind und nicht ohne Gefahr aufgeschoben werden können, so lange zu führen, bis der Erbe anderweit Fürsorge treffen kann. <sup>2</sup>Diese Verpflichtung besteht nicht, wenn der verstorbene Ehegatte das Gesamtgut allein verwaltet hat.

## A. Function

For the time up to the partition, § 1472 orders the joint management of the marital property. This best suits the interests of the spouses. There is only a change if a spouse had previously had sole management rights. In the cases of joint management, the rule applied so far remains.

## B. Explanation

### I. Principle: joint management

In practice, joint management means that **joint ownership** is granted. §§ 1422 et seq. no longer apply. Benefits must now be made to both spouses and can only be demanded in such a way that they are to be provided to both spouses.<sup>1</sup> Unless it is a matter of necessary management measures (see Sub. 3), the spouses must cooperate in disposing of items belonging to the marital property. An exception only applies if the community of property is terminated due to the death of a spouse, Sub. 4). Insofar as none of the exceptions mentioned apply and the acting spouse is not protected because of his good faith in the continued existence of the community of property (Sub. 2), the spouses only commit themselves personally to legal transactions carried out without the approval of the other; liability for the marital property or the other spouse is excluded. If necessary, there is a liability towards the third party according to § 179. The spouses bear the costs of the management in equal parts (§ 748 by analogy).

The authority to jointly manage corresponds to an **obligation of jointly management**.<sup>3</sup> Each spouse is subject to the duty to cooperate in those measures that are necessary for the proper management of the marital property (Sub. 3). The duty to cooperate in management measures of the community can result in a right to a usage fee for a property belonging to the marital property and inhabited by only one spouse. The principles developed for § 745(2) apply.<sup>2</sup> Unlike during the existence of the community of property (see § 1452), however, the substitution of the approval is excluded. The refusing spouse can only be sued regarding the approval. In the event of gross negligence (see § 1359), claims for damages by the other spouse may be considered. The duty to cooperate has no effect on third parties; it is purely internal.

<sup>1</sup> BGH 17.9.1958 – V ZR 63/58, FamRZ 1958, 459.

<sup>2</sup> OLG Hamm 22.12.2015 – 3 UF 83/15, BeckRS 2016, 9845.

## II. Exception: sole management

- 4 Exceptionally, a spouse is authorised to sole management if a management measure is required to preserve the marital property (e.g. filing a lawsuit in relation to a marital property claim threatened by statutory limitation periods). In addition, a spouse can act alone as long as he does not know of the end of the community of property and ought not know anything about it (Sub. 2, standard: § 122(2)). However, third parties are not protected if they know or ought to know when entering into a legal transaction that the community of property has ended. In this case, they cannot invoke the management authority of the spouse acting alone (Sub. 2 2<sup>nd</sup> St.).

## III. Management after the death of one of the spouses

- 5 If the community of property ends through the death of a spouse, the surviving spouse must conduct the transactions necessary for proper management, which cannot be postponed without risk, until the heir can take care thereof. This obligation does not exist if the deceased spouse managed the marital property alone. In the event of a culpable (standard: § 1359) violation, the survivor is liable to the heir for damages.

### § 1473

#### Direct substitution

(1) Whatever is acquired on the basis of a right that is part of the marital property or as compensation for the destruction of, damage to or deprivation of an object that is part of the marital property, or is acquired by a legal transaction that relates to the marital property, is marital property.

(2) If a claim that is acquired by legal transaction is part of the marital property, the debtor need not allow this to be asserted against him until he has knowledge that the claim is part of the marital property; the provisions of §§ 406 to 408 apply with the necessary modifications.

### § 1473

#### Unmittelbare Ersetzung

(1) Was auf Grund eines zum Gesamtgut gehörenden Rechts oder als Ersatz für die Zerstörung, Beschädigung oder Entziehung eines zum Gesamtgut gehörenden Gegenstands oder durch ein Rechtsgeschäft erworben wird, das sich auf das Gesamtgut bezieht, wird Gesamtgut.

(2) Gehört eine Forderung, die durch Rechtsgeschäft erworben ist, zum Gesamtgut, so braucht der Schuldner dies erst dann gegen sich gelten zu lassen, wenn er erfährt, dass die Forderung zum Gesamtgut gehört; die Vorschriften der §§ 406 bis 408 sind entsprechend anzuwenden.

- 1 In the interest of the other spouse who is also involved in the marital property, § 1473 breaks from the rule that with the end of the community of property each spouse acquires new property and new debts only for himself by ordering that in three cases also what was acquired after the end of the community of property falls into the marital property. The cases are: acquisition as compensation due to destruction, damage or confiscation of marital property (e.g. insurance claims), acquisition based on a right belonging to the marital property (e.g. collection of marital property claims) and acquisition through legal transaction, insofar as this relates to the marital property. An economic link with the marital good is sufficient, such as that something is bought with means from the marital property.
- 2 **Third parties** are protected by the fact that in the event that a claim that has been acquired through a legal transaction belongs to the marital good, the debtor only has to accept this against him when he gains knowledge thereof. §§ 406–408 apply with the necessary modifications (Sub. 2). The debtor can discharge the spouse as long as he considers him as his creditor and can also offset claims against the spouse against him. Sub. 2 applies regardless of an entry in the Marriage Property Register. Knowing the debtor does not suffice to negate his good faith.

### § 1474 Implementation of the partitioning

The spouses effect the partitioning, unless they agree otherwise, under §§ 1475 to 1481.

### § 1474 Durchführung der Auseinandersetzung

Die Ehegatten setzen sich, soweit sie nichts anderes vereinbaren, nach den §§ 1475 bis 1481 auseinander.

§ 1474 makes clear that partitioning can take place by agreement of the spouses in addition to the procedure provided for in §§ 1475 et seq. As this agreement is not a marriage contract, it does not need the form of § 1410. A formal requirement only exists if the transactions to be carried out for the partitioning themselves require a form (main case: transfer of real estate property, § 925).

### § 1475 Discharge of the marital property obligations

(1) <sup>1</sup>The spouses must first discharge the obligations of the marital property. <sup>2</sup>If an obligation is not yet payable or if it is disputed, the spouses must retain whatever is necessary to discharge this obligation.

(2) If a marital property obligation, as between the spouses, falls on one of the spouses alone, the latter may not require that the obligation be discharged from the marital property.

(3) The marital property must be converted into money, to the extent that this is necessary, in order to discharge the marital property obligations.

### § 1475 Berichtigung der Gesamtgutsverbindlichkeiten

(1) <sup>1</sup>Die Ehegatten haben zunächst die Gesamtgutsverbindlichkeiten zu berichtigen. <sup>2</sup>Ist eine Verbindlichkeit noch nicht fällig oder ist sie streitig, so müssen die Ehegatten zurückbehalten, was zur Berichtigung dieser Verbindlichkeit erforderlich ist.

(2) Fällt eine Gesamtgutsverbindlichkeit im Verhältnis der Ehegatten zueinander einem der Ehegatten allein zur Last, so kann dieser nicht verlangen, dass die Verbindlichkeit aus dem Gesamtgut berichtigt wird.

(3) Das Gesamtgut ist in Geld umzusetzen, soweit dies erforderlich ist, um die Gesamtgutsverbindlichkeiten zu berichtigen.

## A. Function

§ 1475 describes the first step of the partitioning, the regulation of the marital property obligations. This must be done first (Sub. 1 1<sup>st</sup> St.) so that it becomes clear whether a surplus has arisen that can be divided among the spouses in accordance with §§ 1476 et seq.

## B. Explanation

**Marital property obligations** are all claims that arose during the community of property and are directed against the marital property (see §§ 1437, 1459, claims for compensation according to §§ 1445(2), 1446(1), 1467(2)). As an exception, claims arising after the termination of the property regime must also be counted here if these are solely due to debt rescheduling of old claims that had been directed against the marital property and the marital property liability is agreed.<sup>1</sup> All marital good obligations must be paid. If a spouse has to bear internal debts alone (Sub. 2, see §§ 1441–1445, 1463–1466), however, he cannot demand the payment of these

<sup>1</sup> OLG München 13.7.1994 – 12 UF 667/94, FamRZ 1996, 290.



liabilities from the marital property. In this respect, only the other (i.e. the person who does not have to bear the internal liability) can demand payment.

- 3 In addition to performance, **payment** includes all types of performance surrogates. The aim is to extinguish the burden on the marital property. This can also happen if one spouse assumes the burden alone.<sup>2</sup> If the marital property does not have sufficient liquid assets, it must be converted into money so that the liabilities can be repaid (Sub. 3). If obligations are disputed or not yet due so that a correction is not yet indicated, the spouses must withhold what will be necessary to discharge the obligation (Sub. 1 2<sup>nd</sup> St.).

### § 1476

#### Division of the surplus

(1) The surplus that remains after the discharge of the marital property obligations is due to the spouses in equal shares.

(2) <sup>1</sup>Each spouse must allow whatever he is to reimburse to the marital property to be set off against his share. <sup>2</sup>To the extent that he does not make compensation in this way, he remains obliged to the other spouse.

### § 1476

#### Teilung des Überschusses

(1) Der Überschuss, der nach der Berichtigung der Gesamtgutsverbindlichkeiten verbleibt, gebührt den Ehegatten zu gleichen Teilen.

(2) <sup>1</sup>Was einer der Ehegatten zum Gesamtgut zu ersetzen hat, muss er sich auf seinen Teil anrechnen lassen. <sup>2</sup>Soweit er den Ersatz nicht auf diese Weise leistet, bleibt er dem anderen Ehegatten verpflichtet.

- 1 § 1476 describes the second step of the partitioning: after the obligations have been discharged (§ 1475), the remaining surplus is to be divided equally among the spouses (Sub. 1). The **amount** to be distributed includes, in addition to the surplus after discharge of obligation, what a spouse still has to reimburse to the marital property (see §§ 1435 3<sup>rd</sup> St., 1441–1444, 1445(1), 1446(1), 1463–1466, 1467(1), 1468, 1477(2)), unless this has already been done before the marital property obligations were discharged.
- 2 The surplus **divided equally**, irrespective of how much each spouse has contributed to the marital property. Each spouse has to count towards the share what he himself still has to compensate for the marital property (Sub. 2 1<sup>st</sup> St.). Insofar as his obligation to pay compensation exceeds the share he is entitled to, he must compensate the other spouse for the difference (Sub. 2 2<sup>nd</sup> St.). For further modalities, see § 1477.

### § 1477

#### Implementation of the division

(1) The surplus is divided under the provisions on co-ownership.

(2) <sup>1</sup>Each spouse, on repayment of the value, may take the things that are intended exclusively for his personal use, in particular clothes, jewellery and tools. <sup>2</sup>The same applies to the objects which a spouse has brought into the community of property or acquired during the period of community of property as a result of succession, as a legacy or with regard to a future right of succession, by donation or as an advancement.

### § 1477

#### Durchführung der Teilung

(1) Der Überschuss wird nach den Vorschriften über die Gemeinschaft geteilt.

(2) <sup>1</sup>Jeder Ehegatte kann gegen Ersatz des Wertes die Sachen übernehmen, die ausschließlich zu seinem persönlichen Gebrauch bestimmt sind, insbesondere Kleider, Schmucksachen und Arbeitsgeräte. <sup>2</sup>Das Gleiche gilt für die Gegenstände, die ein Ehegatte in die Gütergemeinschaft eingebracht oder während der Gütergemeinschaft durch Erbfolge, durch Vermächtnis oder mit Rücksicht auf ein künftiges Erbrecht, durch Schenkung oder als Ausstattung erworben hat.

<sup>2</sup> BGH 5.6.1985 – IVb ZR 34/84, NJW 1985, 3066.