

Abstract

The assumption according to the Czech regulation of statutory joint ownership of property during a settlement is that the share of both spouses in the joint property is equal. However, the principles of settlement under § 149 ObčZ are to be considered. According to one of these principles, it has to be considered to what extent each spouse has provided for the family and contributed to the acquisition and preservation of the joint property.

The joint ownership of property acquired under German law is more promoting the sole breadwinner model. This is particularly evident in the scheme of consequences in case of divorce. Gain equalization enables that spouse to take share in the property acquired (i.e. gain) in the course of the marriage who for reasons of homemaking forwent taking part in property acquisition.

The statutory matrimonial property regime according to Swiss law is the joint ownership of property acquired which includes both the gain during marriage and the personal property of each spouse. According to Article 205 ZGB, in case of liquidation of the matrimonial property regime, each spouse takes back his/her property that are in the possession of the other spouse. Thereafter, property of each spouse is divided into personal property and in property acquired (gain). The settlement proposal is then the net of gains and debts. Each spouse is entitled to one half of the proposal of the other spouse according to Article 215 Paragraph 1 ZGB.