

Divorce and matrimonial property

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In divorce, a life insurance policy is treated as an asset of the spouse who holds the policy, regardless of the designation of beneficiaries. Under the Swiss ordinary property regime of participation in acquired property, the surrender value of a policy funded from the earnings of a spouse during the marriage forms part of that spouse's acquired property and enters into the calculation of the share in the surplus. A policy funded from assets that a spouse brought into the marriage or inherited is his own property, but the income and increase in value may raise questions of allocation that the courts decide on the basis of the origin of the funds.¹

The designation of the spouse as beneficiary does not survive a divorce automatically. Swiss law does not provide for the automatic revocation of beneficiary designations upon divorce, although the interpretative rule that "spouse" means the person married to the policyholder at his death leads to the same result where the designation refers to the spouse by function without naming the person. A designation of the former spouse by name remains effective until it is revoked. Advisers should therefore include the revision of beneficiary designations in every divorce agreement.

Pension assets in pillar 3a are subject to special rules in divorce, while the occupational pension assets of the second pillar are divided according to the rules on pension equalisation. Life insurance policies in pillar 3b, including wrapper policies, are subject to the ordinary rules of matrimonial property. A wrapper policy cannot therefore be used to remove assets from the claims of a spouse in divorce. Transfers into a policy that are intended to reduce the acquired property to the detriment of the other spouse may be added back in the calculation.²

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1 Notes

1. See Art. 196 ff. ZGB, in particular Art. 197 (acquired property) and Art. 198 (own property), and the provisions on the valuation of assets at the time of dissolution of the matrimonial property regime. To be verified. ↩
2. See Art. 208 ZGB on the addition of certain transfers to the acquired property in the liquidation of the matrimonial property regime, and Art. 122 ff. ZGB on the division of occupational pension assets. To be verified. ↩

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