



# Reciprocal gifts in marriage and legal cohabitation

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Do you want to take your relationship to the next level? Are you considering whether to get married or rather opt for legal cohabitation? Today's trend shows that more and more couples are choosing legal cohabitation before taking the step to marriage. But why is that? In this article, we will explain the main differences before delving into the possible gifts between partners.

## *Marriage or legal cohabitation?*

### *Start*

Starting a legal cohabitation is considerably more accessible than entering into a marriage. Legal cohabitation is possible once you and your partner are legally competent to enter into an agreement and are not already married or legally cohabiting with someone else. Once both partners make a declaration of legal cohabitation at the registrar of births, you are legally cohabiting. A marriage, on the other hand, involves more formalities.

### *En route*

In a marriage, the rules of the primary marital property regime are of public policy, meaning they apply to all spouses from the time of marriage and throughout the marital period.

But there is also secondary matrimonial property law, which regulates the property relations of spouses among themselves and in relation to third parties. Spouses can choose which regime they fall under, otherwise they automatically fall under the legal regime. For legal cohabitants, secondary matrimonial property law applies by analogy, which is why it is still wise to draw up a cohabitation agreement, similar to a marriage contract.

The choice between marriage and legal cohabitation is personal and depends on several factors. Although marriage is more elaborate from a legal standpoint, legal cohabitation also offers numerous options for settling matters. It is essential to consider all aspects thoroughly before making a decision that suits you and your partner.

## ***End of the relationship***

When the roads are no longer going in the same direction, a marriage may come to an end. In this case, divorce proceedings must be initiated, for which you must apply to the appropriate family court, with or without the assistance of a notary or lawyer.

On the other hand, ending a legal cohabitation requires almost no complex procedure. All you have to do is contact the registrar of marriages and report that the cohabitation is being terminated. It is not even necessary for both partners to be present in person, since a legal cohabitation can be terminated unilaterally.

## ***Gifts between spouses***

If legal cohabitation seems so simple, why get married? In fact, despite the administrative formalities, there are significant tax advantages you can take advantage of. For many years, it has been common practice for spouses to be able to gift goods from their own assets to each other. The advantage of these gifts between spouses, outside of a prenuptial agreement, is that they are revocable at any time.

This flexible technique has helped in many cases when a marriage is on the verge of collapse. Indeed, revocation does not require any specific conditions of form and can be invoked when dissolving and liquidating the marital community during a divorce. Since revocation is retroactive, the donated property returns to the donor's estate tax-free.

In theory, it is even possible to invoke the revocation upon the death of the beneficiary spouse. As long as the donating spouse is alive, he or she can revoke the gift. However, it is important to note that this could potentially come with tax consequences, as inheritance tax may be levied. Currently, the Flemish Tax Administration has labeled the revocation of the donation upon death as a tax abuse in several cases. Pending legal rulings in this area, it is advisable to consider alternative planning methods.

## ***Reciprocal donations between partners***

Another way to benefit your partner in a tax-friendly way is through reciprocal gifting. In this technique, one partner makes a gift to the other partner on the condition that the gift will be dissolved upon the beneficiary partner's pre-death. Subsequently, the other partner makes a similar donation. There must be a link between the two gifts, which can be expressed chronologically, legally and/or formally. Chronologically: when both gifts occur almost simultaneously; formally: when both gifts occur in one deed; legally: when one gift is made as a function of the other gift.

In particular, this technique can provide significant tax benefits for reciprocal gifts of movable property. The flat 3% rate contrasts with the well-known progressive inheritance tax rates of 3% - 9% - 27%. For gifts of real estate, however, the tax savings will be less significant.

However, the Civil Code does not allow spouses to execute reciprocal gifts in a single deed unless it is incorporated into the marriage contract or an alternative form of gift is available. Legal cohabitants are not subject to this prohibition. They can, therefore, have reciprocal donations recorded in one notarized gift deed, which may result in gift tax being levied only once. The conditions for this are laid down in Article 2.8.4.1.2, first paragraph, of the Flemish Tax Code.

**However, be careful!** The Flemish Tax Office is not a fan of this technique and will not hesitate to classify it as tax abuse. There must be a solid non-tax justification to get around this test. Adding different assets with different values to the reciprocal gift may increase the chances of success.

## *Conclusion*

Ultimately, the choice between marriage and legal cohabitation is a personal decision. While marriage offers additional legal protections, legal cohabitation also offers numerous options for managing your affairs. The important thing is to choose the option that best suits your personal situation and needs.



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