

# MAIN DIFFERENCES BETWEEN REGISTERED PARTNERSHIP AND MARRIAGE

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Registered partnership and marriage are two forms of union implying different legal consequences, also from an Immigration law perspective.

In Italy, the distinction between partnership and marriage has been subject to legislative and interpretive evolutions over the past decades. A turning point came with the 2016 Cirinnà Law.

This Law, on the one hand, gave same-sex couples the same rights as heterosexual couples united by marriage. ('Civil Unions'); on the other hand, it offered some legal recognition to de facto couples, through the so-called 'registered partnership' (applicable to all couples, heterosexual or homosexual).

In this article, we briefly explain the main differences between a *registered partnership* and *marriage*, also from the perspective of Italian immigration law and the possibility of obtaining a residence permit as the spouse or registered partner of a person who is already legally residing in Italy.



## DEFINITIONS

**MARRIAGE** is a legal act formally recognized by the State, implying a series of legal rights and obligations between spouses. It is regulated by Book I, Title VI, of the Italian Civil Code, which regulates inheritance, property rights, and responsibilities of the spouses.

**REGISTERED PARTNERSHIP**, is a form of union and cohabitation formalized with the Municipality of residency that differs from marriage in many legal aspects (Art. 1, paragraph 50 et seq. of the Cirinnà Law). The main differences will be explained in the following paragraphs.

As a starting point, it is noteworthy that the Cirinnà Law provides for three different levels of registered partnership:

1. Simple partnership;





2. Registered partners with decision-making authority on health and in the event of death.

When this registered partnership regime is opted for, in case of illness resulting in the lack of capacity to make decisions for oneself, the partner can decide on 'health' issues and on access to care, and be fully informed about the partner's condition.

In case of death, the partner has the right to decide on organ donation, treatment of the body, and funeral celebrations.

3. Registered partners with a partnership contract.

In these cases, partners sign a contract that may contain: a) the modalities of contribution to their life in common; as well as b) the community of all properties acquired during the partnership by each partner (otherwise, the principle of property separation is followed, as explained in chapter 2. The registered partnership contract does not preclude mutual empowerment in matters of health and death.

## 1. OBLIGATIONS AND RIGHTS OF SPOUSES AND COHABITANTS

In MARRIAGE, spouses are subject to a number of mutual obligations, including:

- *Fidelity*: the obligation not to have emotional and sexual relations with third persons;
- *Moral and material assistance*: mutual assistance and support when needed;
- *Child support*: spouses must contribute, proportionally to their means, to the economic support of the family;
- *Asset and legal security*: spouses are entitled to use joint properties, legal usufruct, and survivor's pension.

REGISTERED PARTNERS, on the other hand, are not held to the same legal obligations of fidelity or care, although the duty of mutual support is increasingly recognized.

In addition, partners do not enjoy the same property rights as spouses (such as the right to access the deceased partner's pension or to obtain the division of their properties if the registered partnership ends), unless there are specific contracts or written agreements regulating the registered partnership, as in the aforementioned case *a partnership contract*.

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## 2. PROPERTY REGIME

Another key distinction between marriage and registered partnership concerns the property regime.

MARRIAGE, in the absence of a different agreement, provides for a regime of community of property, under which, subject to exceptions, property acquired during the marriage, even if acquired with the economic resources of only one spouse, becomes common property. Otherwise, spouses may opt for the regime of separation of property.

For REGISTERED PARTNERS, the property situation is different. In the absence of explicit agreements, assets acquired during the registered partnership remain the exclusive property of the individual partner, with no reciprocal rights to each other's property.

However, there are some forms of protection, such as the registered partnership contract, which can regulate the management of common property or guarantee economic rights in case of separation (Art. 1 paragraph 53, Cirinnà Law).

## 3. SUCCESSION AND RIGHTS UPON DEATH

MARRIAGE gives a spouse the right to inherit the other's properties in the event of death. The spouse thus inherits a share of the deceased's assets. The amount of the inheritance share depends on the possible presence of other legitimate heirs and the possible presence of a will. It is noteworthy that, in the Italian legal system, the spouse is called a "legitimate" heir because, even in the absence of a will in his or her favour, he or she is still entitled to a statutory inheritance share of the deceased spouse's assets.

REGISTERED PARTNERS are not entitled to inherit any share of their partner's property unless there is a will in their favour.

Unlike for spouses, there is no right to the deceased partner's pension (so-called survivor's pension).

However, provision is made for the possibility of living, for a specified period, in the home of the deceased partner, as long as the children's interest in remaining in the family home is not harmed (Art 1, paras. 42, 43).

*"In the Italian legal system, the spouse is called a "legitimate" heir because, even in the absence of a will in his or her favor, he or she is still entitled to a share in the deceased spouse's estate."*

## 4. SEPARATION AND DIVORCE



In the case of MARRIAGE, separation and divorce are regulated legal acts, leading to the termination of the marital bond, the division of property, the possible award of alimony, and the determination of child custody.

Divorce, which usually occurs after a period of legal separation, involves the *final* termination of the marriage.

For REGISTERED PARTNERSHIPS, there is no real separation or divorce process, but the relationship can end freely. Dissolution of a registered partnership, in other words, does not require a formal legal ground and process, unlike marriage.

Only where there are minor children or specific property arrangements the court's intervention may be necessary to resolve custody or property division issues.

## 5. DIFFERENCES AS TO THE RESIDENCE PERMIT FOR FAMILY REASONS

Another important area where significant differences emerge between marriage and registered partnership concerns the possibility of obtaining a residence permit as a family member of the spouse/partner already legally residing in Italy.

### MARRIAGE

In Italy, immigration laws provide specific rights for foreign spouses of Italian citizens or citizens of the European Union.

Most importantly, a foreign spouse of an *Italian citizen or EU citizen* residing in Italy, for example, can obtain a residence permit for family reasons, which allows them to live and work in the country, provided that the marriage is not a sham marriage and that the spouses cohabit.

Likewise, the foreign spouse of *a non-EU national* legally residing in Italy with a regular residence permit is entitled to a residence permit for family reasons, with procedures that may vary depending on the specific nationality.

### REGISTERED PARTNERSHIP

In the case of a registered partnership, however, the situation is more complex and restrictive.

A foreign national, already in possession of a regular residence permit and with registered residence in Italy, can apply for and obtain registration of his registered partnership *with his Italian or European spouse*. This entitles him or her to convert his or her permit into a residence permit for family reasons, lasting 5 years.

On the other hand, the foreign citizen who does not have a residence permit, since he or she cannot register with the registry office of the municipality where he or

*“A foreign national, already in possession of a regular residence permit and with registered residence in Italy, can apply for and obtain registration of his partnership with their Italian or European spouse”*



she lives, is prevented from registering his or her registered partnership with his or her partner. In such cases, to obtain a residence permit, the intervention of the judge is usually necessary, who must ascertain the cohabitation and stable sentimental relationship of the couple.

Furthermore, unlike in the case of marriage, it is not possible for foreign nationals to apply for a residence permit for family reasons on the basis of a registered partnership with a non-EU citizen legally residing in Italy.

*For further reading, see also:*

- [Family Unity](#)
- [Family Cohesion](#)
- [Family Reunification](#)
- [Residence Permit for Cohabitation/Partnership](#)

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