

Efectos jurídicos del contrato de leasing habitacional en la liquidación de la sociedad conyugal y de la sociedad patrimonial

Legal effects of the housing leasing contract in the liquidation of the marital and patrimonial partnerships

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RESUMEN:

La sociedad conyugal y la sociedad patrimonial son instituciones relativas a la administración de bienes, que nacen, respectivamente, o del acuerdo de voluntades bajo la figura del matrimonio o de la decisión responsable de los compañeros permanentes que se unen, y que se encuentra regulada en el Código Civil colombiano y en la Ley 54 de 1990, salvo algunas excepciones. No obstante, la identificación del patrimonio que compone los activos y pasivos del haber social, especialmente cuando los bienes se mantienen en cabeza de un tercero, como ocurre tras la celebración de un leasing habitacional, sugiere que se analicen con detalle las obligaciones de cada una de las partes. En la práctica, jueces y notarios han aplicado diversas estrategias para lograr una partición equitativa y, de esta forma, evitar el detrimento o incremento sin justa causa de los gananciales. A través del presente artículo se pretende revisar el tema desde el punto de vista dogmático y desde el ejercicio jurisdiccional.

Palabras clave:

Activos, Bienes sociales, Leasing, Liquidación, Sociedad conyugal, Sociedad patrimonial.

ABSTRACT:

The conjugal partnership and the patrimonial partnership are institutions related to the administration of assets, which arose or the agreement of wills under the figure of marriage or the responsible decision of the permanent partners who join, respectively, and are regulated in the Colombian Civil Code and the Act 54/90, with some exceptions. However, the identification of the patrimony that comprises the assets and liabilities of the social asset, especially when the assets are held by a third party, as occurs after the conclusion of a housing

lease, suggests that the obligations of each one be analyzed in detail of the parts. In practice, judges and notaries have applied various strategies to achieve an equitable partition and, in this way, avoid the detriment or increase without just cause of the joint assets. This paper aims to examine the subject matter from both a dogmatic perspective and a jurisdictional standpoint.

Keywords:

Assets, social assets, leasing, liquidation, marital partnership, patrimonial partnership.

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Introduction

The conjugal society is a legal entity formed upon the formalization of a marriage. The conjugal partnership regime involves the presence of what is known as community property, a legal concept that originated from the Civil Code of the United States of Colombia in 1873 and was later adopted by the Republic of Colombia in 1887, which referred to the bundle of rights that the law granted to the husband over the person and assets of the wife. Law 28 of 1932 amended the original concept by granting women the authority to acquire assets during the married union and manage them independently.

Following that, Decree 2820 of 1974 was enacted to ensure equal rights and responsibilities for both women and men. This further step enabled women to manage all the assets that were part of the marital partnership on an equal basis.

Law 54 of 1990 established regulations regarding de facto marital unions and the patrimonial regime that applied to permanent partners. This law institutionalized the de facto marital union and set forth the requirements for the formation of the economic family relationship. Unlike marital partnerships, this does not occur immediately and automatically.

In this shared administration scenario, where there is a potential for confusion between individual and joint assets, it has become imperative to establish a set of terms and conditions to prevent disputes.

When a marriage or property partnership ends, it is necessary to create an inventory to identify the assets and debts each party acquired or incurred. This inventory helps determine who contributed or incurred these assets or debts, and the details of their contributions or incurrences. Only after establishing this relationship can the partnership be dissolved, following the guidelines set forth in the First Law of 1976 and Article 180 of the Civil Code. +- whose objective is to ensure a fair distribution of assets between married couples or long-term partners, depending on the circumstances.

Nevertheless, some changes have taken place in Law and the origins of obligations have also transformed over the years, giving rise to new and unconventional forms of commerce and business. One such example is housing leasing, which has enabled many families to obtain housing by paying a lease fee and having the option to purchase the property as per the terms of the contract. According to Asobancaria, this kind of leasing experienced a 3.02% growth in the 2021 fiscal year, resulting in a nominal portfolio rise of about 30.23 trillion pesos compared to the previous fiscal year (Asobancaria). Nevertheless, the aforementioned illustration suggests that the actual legal ownership of the real estate asset in the firm remains in the control of the financial organization, at least until the chance for acquisition is utilized. This circumstance deviates from the ordinary nineteenth-century regulation of marital partnership and under the existing normative reference, as well as the community of property, which is based on a normative paradigm that does not anticipate conditions that are comparable to those arising from contracts specifically created for the modern world. Thus, this research aims to examine and evaluate several approaches for incorporating house leasing responsibilities into the

dissolution of marital and financial relationships.

This essay is a reflective piece that seeks to make a judgment and construct a response based on legal principles, court rulings, scholarly writings, and the practices of the leasing industry in the market, as there is currently no established consensus or distinct guideline on the proper format for this type of contract.

According to the literature reviewed, it is widely accepted that the responsibilities resulting from contracts similar to housing leasing should be considered during liquidation, as spouses or permanent partners have complete control and management over all the company's property, shares, assets, and liabilities (Valencia, 1970; Parra, 2008; Jaramillo, 2013). However, as expected, there are other doctrinal provisions. Holguín (2006) argues that couples (including permanent partners) do not possess complete "freedom" to form social liabilities, so "the consent of both spouses shall be required in such cases" (p. 121).

This article aims to provide ideas to the academic community and propose a plan that enables a fair and straightforward determination of the rights of spouses and permanent partners during the liquidation of their family partnership, which is particularly relevant when considering the presence of a housing leasing contract and similar business arrangements. Undoubtedly, this subject matter might become interesting to litigation lawyers, justice administrators, notaries, and public registrars, whose academic training and professional experience necessitate them to possess up-to-date knowledge to effectively address the challenges stemming from the modifications and advancements in traditional legal institutions. Similarly, as housing leasing has become increasingly prominent in the market and housing sector, this article may be of interest to banks and other credit institutions that offer leasing services, as well as to policymakers involved in designing public housing policies and the general public. The primary goal of the research is to enhance and establish connections among the aforementioned institutions. As per the above, this document will outline the regulations regarding the tangible assets that constitute the total and proportional ownership in both partnerships. It will also describe the objectives of the family economic system and, after determining the extent of the housing leasing business, it will address the procedural and substantial aspects related to settling the obligations arising from the marital and financial partnership.

Methodology

The research is qualitative, documentary, and descriptive in nature and it aims to analyze the potential integration of two institutions, which have been permeated by social and economic changes, into the Colombian legal system but at the same time to propose a formula that preserves the nature of these institutions and maintains the unity of the legal system, all of which will be achieved through critical analysis of sources and legal hermeneutics (Deobold, Van Dalen, and Meyers 2006).

As part of the research, an examination of constitutional, legal, and regulatory frameworks was conducted, specifically focusing on the Colombian Civil Code, Law 28 of 1993, Law 1 of 1976, Law 25 of 1992, Decree 782 of 1995, Law 795 of 2003, and Law 1537 of

2012, among other relevant legislations.

Similarly, legal sources were examined from the Supreme Court of Justice, the Constitutional Court, and certain Superior Courts' Civil or Civil-Family Decision Chambers, which allowed providing insights into how such cases, or similar ones, have been resolved by the judicial administration.

By way of resources, a review of the background information relating to existing regulations regarding marital and patrimonial partnerships was performed, as well as the fragmented regulatory framework surrounding leasing in general, and housing leasing specifically. The primary approach to interpretation employed was grounded in exegetical and systematic methodologies. The former refers to grasping the legitimacy and extent of the rules and their alterations, while the latter pertains to establishing connections between the conceptual categories being discussed, without giving rise to contradictions or conflicts. Furthermore, the analysis was enhanced by applying sociological methodologies, which allowed for a deeper understanding of the historical backdrop that has influenced developments in both the family and the global business environment.

Eventually, an examination was conducted on the national and international doctrine to identify specific variables suggested for the administration of leasing agreements and particular occurrences related to the dissolution of comparable family businesses.

Reflection

Family Property Regime

When exploring partnerships within families, specifically the economic aspects, it is vital to consider that they typically arise from marriage or the establishment of a shared estate in a de facto marital union, which entails the formation of an entity without a legal status that encompasses the assets acquired or contributed by the spouses or permanent partners throughout its existence as appropriate.

Unlike other partnerships, the conjugal partnership and the patrimonial partnership are sui generis institutions as their liquidation is not determined by the specific contributions made by each partner, but rather by a valuation of both tangible and intangible assets, which is legally defined as 50% of the constructed assets, known as the community property.

The Civil Code classifies assets inside the marriage partnership and, as per the legal exemption of Law 54 of 1990, also within the patrimonial partnership, into two categories: personal assets and social assets. Pursuant to the court ruling C-014 of 1998: "personal assets refer to properties obtained by cohabitants through donations, inheritances, legacies, or belongings owned individually at the time of joining the partnership", with certain exclusions. Social assets refer to those obtained by valuable consideration when the marital or patrimonial partnership is in effect, and as a result, they become part of the common assets.

By doing so, it is possible to differentiate between two types of social assets: absolute social assets and relative social assets. Absolute social assets are laid down in Article 1781 of the Civil Code and consist of assets that directly contribute to the conjugal or patrimonial society. Relative social assets, on the other hand, comprise assets that have restitution charges for the contributor. The conjugal partnership and the patrimonial partnership serve as a “repository for assets”, where each spouse or partner possesses rights to the assets and manages them independently. Upon liquidation, the assets will be divided equally between the parties.

Co-administration of assets has not been a customary practice since ancient times. It was introduced in the mid-1970s, following the issue of Decree 2820 of 1974. In the past, the assets that were used for social purposes were controlled exclusively by the male head of the family, without acknowledging the rights of ownership and the ability of women to manage and control them (Jaramillo, 2013).

In a ruling dated October 3, 1973, the Supreme Court of Justice, Civil Chamber, stated that in the context of asset sales: an individual is not being sued as an individual spouse or both spouses. Additionally, this individual does not have any obligations towards third parties, nor do third parties have any obligations towards this individual. They are the individuals who are either creditors or debtors, regardless of whether the commitments are related to social or personal debts.

It is important to note that the concept of social assets did not exist before 1932. Law 28 of 1932 granted women the ability to acquire and possess assets, which they could later contribute to their marriage. A few years later, in 1974, women were also given the power to manage their own assets, which marked the end of the exclusive authority of husbands or family men over jointly contributed property.

Since 1932, there has been a need to establish the responsibilities and obligations that arise when an asset, of any kind, becomes part of a marital partnership (applicable by then only). Given that both parties might have the right to claim ownership and financial responsibilities related to these assets or otherwise management.

In modern-day, Article 1781 of the Civil Code outlines the specific goods and incomes comprising the social assets, which include salaries and basic pay from employment or labor relations, profits obtained, revenues acquired from owning goods, pensions, interests, profits from personal or societal goods, money contributed to the marriage, expendable things, movable assets, and any other goods acquired through payment during the marriage. Nevertheless, the five numerals mentioned in this context are inadequate for determining whether or not the new business forms can be associated with the social assets.

However, it is crucial to note that there are exceptions to every rule. In certain circumstances, assets that have been obtained for valuable consideration by one spouse or partner through the marital or patrimonial partnership may be excluded from the respective partnership, the same way as in the subrogated real estate, assets acquired with separate funds, and assets intended for personal use, among other situations

specified in article 1792 of the Civil Code.

Therefore, due to the complexity of determining whether assets should be included in social assets, and based on how long the regulation has been in force, as well as the current social relations, it becomes necessary to establish criteria for determining whether a specific right or obligation should be associated with the marital or patrimonial partnership. Additionally, in the event of the dissolution of the relationship, it is important to determine the appropriate method and formula for an equitable liquidation.

Serrano Quintero (2017) outlines a set of principles to determine whether an asset should be included in the marriage partnership or the patrimonial partnership. Specifically: the onerous nature of the asset, the need of causality, and the principle of unjust enrichment without a valid reason.

The onerous nature of the asset prohibits the inclusion of assets that were acquired by gift or other forms of free transfer of ownership or real rights. In turn, the criterion of causality necessitates understanding the rationale and method by which the property was obtained. Lastly, the principle of unjust enrichment without good reason necessitates the pursuit of equilibrium in the interactions between two individuals, ensuring that one party is not unfairly disadvantaged by the gains acquired by the other spouse or partner.

The concept of rewards emerged in doctrine and civil codes under the umbrella of the above premises, to ensure equality in rights and opportunities for spouses and partners, by means of the inclusion of obligations or “debts” that one member has towards their own property or the property of their partner. This is quite about an internal scenario that deviates from the conventional notion of social liabilities and only becomes significant when the dissolution of the corresponding marital partnership to take place.

In this regard, the Constitutional Court, through ruling C-278 of 2014, further explores the presence of both relative and absolute assets as previously mentioned. The former refers to the assets described in the 3rd, 4th, and 6th paragraphs of Article 1781 of the Civil Code. The latter refers to the assets mentioned in the 1st, 2nd, and 5th paragraphs thereof and in light of the existence of the former, it grants the corresponding reward, which is the opportunity to receive the updated or indexed nominal value of the contributed assets.

The Constitutional Court asserts and supports the notion that adjusting the value of the contributed property to account for its constant devaluation does not result in an increase in the wealth of the contributing spouse. This approach is considered fair in order to conduct any liquidation without causing any financial harm or making disproportionate decisions.

In a ruling dated September 18, 2019 (STC-127012019), the Supreme Court of Justice supported the idea that compensation from the reward system can promote and guarantee fairness between spouses or (permanent partners) when one of them received and proved a benefit that had been contributed to the family’s wealth, causing to increase those assets.

In this particular instance, the Supreme Court of Justice has ruled that the party seeking compensation must provide evidence of their investments or transfer of assets to the marital partnership, and demonstrate that this led to an increase in the partnership's assets.

In alignment with the thesis of the field of jurisprudence, Valencia Zea (1970) argued that interim debts might potentially arise in familial partnerships, based on the principle of rewards or compensations. It was thus highlighted that "there are situations where the total value of community property grows by taking away from non-property assets, or where the assets of exclusive property are augmented with social assets" (p. 333).

Valencia Zea puts forward two ideas or scenarios regarding the functioning of the incentives, based on these concepts. The first scenario occurs when an individual sells their own property and acquires a new property without utilizing the subrogation of real estate rights. The second scenario involves using funds that should have been paid to the partnership to settle personal debts, excluding debts related to social assets. In both cases, payment must be provided to either the impacted party or the social estate, depending on the circumstances.

Similarly, the obligations of partnerships involved in marriage or asset ownership can be categorized as absolute and relative liabilities. As a general rule, social liabilities typically refer to the debts or obligations which are legally tied to the partnership, as Suarez Franco (2006) stated. As per Article 1796 of the Civil Code, social liabilities encompass the pensions or interests acquired as long as the marital or patrimonial partnership lasts, and non-personal debts incurred during the marriage or marital union, as well as real guarantees and debts for the sustenance and education of the children.

Conversely, relative liabilities refer to the obligations that the partnership must assume, as of when one of the spouses or partners has benefited and as a result, that individual is obligated to compensate the partnership when it is dissolved.

In summary, rewards are designed as compensatory benefits that restore the disruption of economic balance resulting from the administration of assets on a family level and can be claimed upon the liquidation of the relevant partnership. According to Suarez Franco (2006), rewards are referred to as credits that can be claimed by the husband, wife, or conjugal partnership during the settlement of the marital partnership, as a result of any financial changes or payment of obligations that occurred in favor or against the partnership or the spouses (p. 363).

The legal institution referred to in the Civil Code, specifically in Article 1825, and applicable to various family structures, stipulates that "any debts owed by the spouses to the partnership shall be considered as an imaginary addition to the social liabilities, serving as compensation or indemnification, as explained in the aforementioned rules.

Basis of the leasing agreement

In the Colombian legal system, the leasing agreement is classified as an atypical contract, meaning it does not fit into the usual categories of legal agreements and it is commonly used as a form of financing that enables individuals to obtain goods by facilitating their possession or use, while also requiring periodic amortization payments (Superintendencia Bancaria, 2016).

The agreement is considered atypical due to its reliance on commercial customs and practices rather than positive rules, which allows for the development of various types or classes of leasing operations in which one party is given control of the property in exchange for lease payments, with the option to purchase at a later time. Therefore, it is feasible to define it in a distinct way and distinguish it from other agreements based on its fundamental components, rendering it independent and essential.

Leasing emerged as a practical kind of finance aimed at fostering the development, expansion, and enhancement of smaller economies, which has had a significant impact on the company level, leading to an increase in productivity indicators (Asobancaria, 2016).

As mentioned earlier, the lessee uses this contractual instrument to select an asset and shows up at a financial institution to obtain it. Subsequently, the entity bestows the right to use upon the applicant and, in return, receives payments on a periodic basis, akin to a leasing agreement. The basis for classifying the business as a financial contract is primarily due to the applicant's lack of sufficient funds to pay for the property or its down payment. Nevertheless, it is currently employed as a tactic in small businesses and medium-sized companies to prevent the devaluation of assets such as real estate, vehicles, machinery, tools, or technological equipment among others as it is more advantageous to replace them over time rather than accumulating them.

As per Circular Release 220-176862 of November 26, 2018, issued by the Superintendence of Corporations, the fundamental components of the leasing agreement are as follow: the supply of the asset and the payment of a rental fee. However, scholars like Arrubla (2002) consider the presence of the purchase option as a significant factor in the business.

Cardona (2018) argues that leasing is a significant alternative for companies, families, and individuals because it allows them to use and benefit from an asset in exchange for periodic payments, which can be covered by the income generated from the use of such asset, without actually owning it.

Over the years, this figure has become part of the national regulatory system indirectly, through the inclusion of regulatory concepts and circulars. Despite limited regulation, the legal business was initially linked to the organic statute of the Colombian financial system, in which the authorizations were given to conduct those operations, mainly led by credit entities such as financing companies and commercial banks (Banking Superintendency, External Circular 07 of 1996). Subsequently, the Banking Superintendency (known as the Financial Superintendency these days) introduced further regulations including

definitions and addressed other matters, such as the authorization to execute this sort of contract and the various modalities that a leasing operation may take.

Similarly, Decree 2555 of 2010 was enacted to consolidate and reissue regulations pertaining to the financial, insurance, and securities market sectors, through which aimed to address the existing gaps in leasing contracts by clarifying the roles and functions of the parties involved. It also focused on protecting the rights of financial consumers and establishing guidelines for evaluating leased assets, managing risk concentration, and handling the return of assets to financial entities, among other objectives.

The financial leasing

Under this arrangement, one of the parties (the leasing firm) transfers the selected property to the other (the lessee) for their use and benefit. In exchange, the lessee is compelled to make regular payments comparable to a lease fee. Therefore, what makes this type of leasing different is that the lessee is allowed to buy the asset that was initially leased after a predetermined period, whose payments made during this period are considered as payment towards the overall value of the asset (Asobancaria, 2016).

The essential elements of financial leasing include the supply of the asset for use and enjoyment, the payment of a periodic lease fee, and, as Arruba (2002) points out, the existence of the purchase option.

In the financial lease, the risks arising from the use (use and enjoyment) of the property are transferred to the lessee, with provisions being made for repair, maintenance, insurance, and other aspects as soon as they are concluded. This type of business is the most common and commercial form of leasing in authorized entities since it offers significant benefits over the possibility of acquiring the asset, the price is regulated once the contract becomes effective while the estimated period for periodic payments usually constitutes the major part of the useful life of the good.

The operating lease

One of the key components of operating leasing is the ability to display the property that is being leased, which has been chosen by the lessee for acquisition by the leasing firm, along with the payment of a regular charge. In this scenario, the authorized corporation also furnishes the property to a tenant who can use and benefit from it. Similarly, the latter is compelled to make regular payments like a rental charge. However, the distinction between financing and operating leasing lies in the absence of a purchase option in the latter, making it more similar to traditional leases (Asobancaria, 2016).

Operating leasing has a narrow scope, in which the lessee selects the desired property and, once this is supplied by the financial institution, the leased asset is provided for use for the agreed-upon duration.

In this form of leasing, the leasing company is the one that takes on the responsibilities associated with the asset, such as maintenance, repairs, and payment of taxes and

insurance rather than the lessee, which allows for the establishment of distinct objectives, functions, and interests in each case, while still being advantageous for all parties involved in this type of service. Generally, this method is used for assets that quickly deteriorate or become outdated, depending on how they are used, or for additional services that are essential for a company's regular operations.

The relationship between housing leasing and the marital and patrimonial partnership.

The rights and responsibilities that derive from housing leasing, which is a form of financial leasing, and involves the use of real estate for residential and non-commercial purposes, can be challenging to understand within the framework of legislation governing assets and liabilities. Indeed, the nature of housing property introduces additional considerations. If it were solely a financial lease, it could be included in the marital or patrimonial partnership as non-taxable income or occasional profit, which would have a favorable effect on the family's financial situation.

Therefore, the reasons for the dissolution and subsequent settlement of family partnerships are fundamentally subject to taxation. These concepts are only expressed and defined in legal texts and court rulings. Similar to the presence of assets like assets, rights, and interests in these partnerships, some liabilities can exist externally with third parties or internally inside the same marriage partnership, such as rewards mentioned in earlier sections.

In this analysis, we will explore the connection between marital and property partnerships and leasing, as well as propose solutions to the questions raised earlier in this article. Additionally, we will discuss the most effective strategy to uphold the integrity of the legal system.

The analysis as to how to incorporate the responsibilities arising from housing lease agreements into the dissolution of marital or patrimonial companies was conducted through a comprehensive examination of the Constitutional Court's jurisprudence, as well as the rulings of the Supreme Court of Justice and several Superior District Courts and setting the objectives to identify the overarching principles and criteria outlined below:

According to the Constitutional Court, the act of leasing a house confers property rights to the spouse or (partner) who has been making the payments specified in the purchase option or the return of amortized balances at the time of termination. In this regard, to determine the most appropriate form of compensation or remuneration for the afflicted spouse (or partner), some elements need to be carefully considered.

The Supreme Court rulings, particularly the ones issued on August 24, 2018 by Superior Court of Pereira (Civil-Family Chamber), on May 26, 2020 by Superior Court of Bogotá (Family Chamber), and the one issued on June 3, 2020 by Superior Court of Ibagué (Civil-Family Chamber), concur on three crucial factors for determining eligibility for reward payments. Specifically, (i) the source of the resources, (ii) the growth of the family's wealth, and (iii) the harm caused to one of the individuals involved.

Consequently, the individual seeking a reward for the family partnership in the liquidation process must provide evidence that the payments made during the contract were not sourced from their own funds, which are separate from the shared assets, but rather belonged to the joint estate. Nevertheless, those who choose to defend themselves will also have the opportunity to provide evidence that the installment payments were paid using their own funds, even if these funds contributed to the overall growth of the family's wealth, which will support their claim for a reward in their favor.

Therefore, it is essential to establish the social or legitimate cause or origin of the resources utilized, the growth in assets, and the resulting harm without valid or adequate justifications in both scenarios. Once the aforementioned information is determined, it becomes feasible to establish the precise quantity to be acknowledged as a form of remuneration or recompense.

During the liquidation of the marital or patrimonial partnership, once the joint property, along with its assets and liabilities, has been fully identified, it is expected that each spouse will assert ownership of fifty percent of all the existing assets. However, this necessitates the first elimination of the assets and settling the debts owing to external parties. Subsequently, the rights and obligations resulting from the housing lease will be established, giving rise to compensation or indemnification, either for the family's wealth or for spouses or permanent partners. Therefore, after the estate and the couple have achieved a favorable financial position, both in the eyes of external parties and themselves, the assignment will be carried out without any potential negative impact on their assets.

Conclusions

The conjugal and patrimonial partnerships form the economic core of married families or those who have come together without the intention of becoming married, depending on the circumstances. The significance of this concept is rooted in a long history and evolution of gender equality. It emphasizes the equal participation and shared responsibility of both spouses or permanent partners in managing their assets, as well as the ability to create mutual obligations and rights.

The social liabilities refer to the comprehensive collection of assets, rights, and obligations that both spouses or partners have contributed or acquired throughout their family partnership. Even until the relationship is dissolved or until a new economic regime is established, characterized by financial independence.

Commercial companies, as defined in Article 98 of the Code of Commerce (Decree 410 of 1971), are entities where two or more individuals, bound by a voluntary agreement, commit to contributing money, labor, or other valuable assets with the purpose of distributing the resulting profits or losses among themselves. In contrast, family partnerships do not operate under commercial dynamics that is based on equality or mathematical proportionality. The partners' contribution extends beyond financial amounts or measurable tasks. The relationship is formed based on fraternity, mutual

support, and loyalty. This results in a variety of elements, as described in Article 1781 of the Civil Code, being included in the legal and subsidiary framework of this joint institution.

However, it is not a matter of admitting or endorsing patrimonial injuries to the partners (spouses or permanent partners) who abandon this regime. For this reason, the same law provides for a system of rewards, by way of compensation, for the contributions made at the time of its incorporation or throughout its existence. These rewards, precisely, are part of the provisions of the social assets and, according to doctrine and jurisprudence, have a precise moment to be invoked and recognized during the liquidation process.

This phenomenon refers to a situation where one party or the social wealth receives financial benefits or investments throughout a marital or patrimonial partnership and in order to compensate for the advantages gained, the party or social mass must provide a reward that will benefit the spouse or partner who did not receive these benefits at that time, by equalizing the assets and liabilities.

The novelty brought by housing leasing, in comparison to more traditional businesses, is situated within this context. A contract that may not have had the purchase option utilized, but the liquidation of the family partnership from which it may have originated, perhaps benefiting one spouse or permanent partner while adversely affecting the other.

It is important to emphasize the need to include the obligations and rights arising from a housing leasing contract when liquidating the marital or patrimonial partnership. This involves recognizing the source of the funds used to make or continue making the payments, assessing how the purchase option may have affected or improved the assets, and considering the potential negative impact on assets due to contributions made without the opportunity to establish ownership expectations. In addition to other factors that contribute to a more thorough and detailed analysis of the issue, such as the reimbursement of resources or the payment obtained from the contract assignment.

The details of the three previous elements allow for the verification of any outstanding internal debts, either between the spouses or partners or between one of them and the conjugal or patrimonial partnership. Ultimately, not receiving resources that could have been used to generate benefits or freely disposed of can result in damage or loss. These resources, which were diverted before entering one's own or social assets, are instead used to fulfill a specific contractual obligation. Essentially, if the three prerequisites are established, it becomes feasible to reach an agreement or establish a payment for compensation or indemnity, which in turn restores the social and economic equilibrium.

Once the housing leasing contract is mutually agreed upon by the lessee and the financial entity, a financial responsibility arises and must be recorded as a social liability. Once the specified term in the contract is met, the property may or may not be considered an asset. If the purchase option is not utilized, there will be no need for further questions or resolutions. However, if the leased property is acquired or if the partnership is liquidated before this is possible, it will become part of the family partnership and will need to be divided accordingly, with the exceptions mentioned earlier. Alternatively, it will become a liability and potentially a financial advantage for the person who maintains their participation in the leasing contract, which should not be overlooked during the

liquidation process.

Essentially, the spouse or permanent partner who keeps the role of lessee will take on a credit responsibility that, during the settlement, should be seen as a legally assigned debt. However, if the individual chooses to utilize the purchase option, it is quite necessary to recognize that they will have benefited from the partial payments made, likely with assets that were previously communal. Hence, it is prudent to exercise meticulous accounting management of the precise attributes and circumstances that stem from the lease agreement.

Therefore, in the aforementioned context, the current state of housing leasing in Colombia during the dissolution of the marital or patrimonial partnership is a subject that requires further clarification and regulation so that it can present opportunities for the High Courts to establish a unified standard.

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