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LIMITS TO THE POSSIBILITY OF PROVING THE NATURE OF A MATRIMONIAL ASSET

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In In Portugal, whenever the fiancées do not stipulate the property regime to be in force during their marriage, the regime of communion of acquired assets will be in force between them.

In a nutshell, this regime determines that all assets acquired **after** the marriage are part of the spouses' matrimonial assets.

However, there are several exceptions to the rule, one of which is Article 1723(c) of the Civil Code, which tells us that assets acquired with money or valuables belonging to one of the spouses retains the nature of sole property, provided that the source of the money or valuables is duly mentioned in the acquisition document or in an equivalent document.

The possibility of proving that an asset was acquired using one of the spouses' own funds has multiplied following the publication of Uniform Case Law Ruling no. 12/2015, of 2 July 2015, which standardised the understanding that it is possible for the acquiring spouse to prove, **by any means**, that the asset was acquired at the expense of their own assets, even if this is not mentioned in the title deed.

In fact, it follows from this Supreme Court ruling that if the document certifying the purchase of the property is silent as to the source of the funds, any other means of proof allows the paying spouse to prove, at a later date, that the payment was made solely with his or her own money (or with recourse to his or her own assets).

However, it should be made clear that this possibility has a **very significant limit: the existence of third-party interests.**

Take, for example, the situation described in the Lisbon Court of Appeal ruling of 14 February 2023:

In the case in question, a couple signed a public deed for the purchase of a property, largely using the equity of one of the spouses and bank financing for the remainder.

The nature of the funds used was not mentioned in the public deed.

Due to the fact that, in parallel with the purchase and sale, a loan agreement with a mortgage was signed with a third party – the bank – the appeals court ruled that the interests of this third party, which has a claim on the couple's joint assets, should be safeguarded.

It was therefore decided that the case law established by Uniform Ruling No. 12/2015 **does not apply** in a situation where, although the division of the marital assets of the dissolved couple is at issue, a third party creditor of the marital assets has an interest in it.

In short, whenever the interests of third parties are at stake, and not just the positions of the spouses between themselves, the rule remains that **only the explicit mention of the nature of the funds used, made in the document titling the purchase, will make it possible to prevent the property purchased from becoming part of the marital community.**

"(...) it should be made clear that this possibility has a very significant limit: the existence of third-party interests."