

THE MARRIED PERSONS PROPERTY ACT, 1970

No. 69



of 1970

ARRANGEMENT OF SECTIONS

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FIRST SCHEDULE:

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AN ACT TO AMEND THE LAW AS TO THE PROPERTY OF MARRIED PERSONS AND FOR MATTERS INCIDENTAL THERETO

Date of Assent: 25.11.1970

Date of Commencement: 1.1.1971

ENACTED by the Parliament of Botswana.

Short title

1. This Act may be cited as the Married Persons Property Act, 1970, and shall come into operation on the 1st January, 1971.

Interpretation

2. In this Act, unless the context otherwise require —

“matrimonial domicile” means the domicile of the husband at the time of marriage.

Community of property excluded

3. (1) Community of property and of profit and loss and the marital power or any liabilities or privileges resulting therefrom shall not attach to any marriage solemnized between spouses whose matrimonial domicile is in Botswana which is entered into on or after the 1st January, 1971, unless such spouses shall, by an instrument in writing, signed by each of them prior to the solemnization of their marriage and in the presence of two persons, one of whom shall be a District Officer, who shall subscribe thereto as witnesses, have expressed their wish to be exempt from the provisions of this Act.

(2) Such instrument shall be as nearly as possible in the form set forth in the First Schedule and shall be registered in the Deeds Registry within twenty-eight days after the execution thereof on payment of a fee of fifty cents and shall not be valid unless so registered.

Exclusion by agreement of community of property from marriages entered into prior to 1st January, 1971

4. (1) Community of property and of profit and loss and the marital power or any liabilities or privileges resulting therefrom shall not attach to any marriage solemnized between spouses whose matrimonial domicile is in Botswana entered into prior to January 1st, 1971, if before the 31st December, 1973, the parties thereto shall by notarial deed express their wish that this Act shall so apply.

(2) Notice that such deed has been executed shall be published in the Gazette, and the deed shall on proof of such publication be registered in the Deeds Registry on payment of a fee of R2 within twenty-eight days after the execution and shall not be valid unless so registered:

Provided that nothing in this section contained shall derogate from or affect the rights of creditors existing between the date of any such marriage and the registration of any such instrument.

Deeds to specify allocation of property

5. (1) Every notarial deed executed in accordance with the provisions of section 4 shall specify in detail the allocation to each spouse executing such deed of his or her half share of the property held in community at the date of execution thereof, or such other division thereof as they may have agreed upon.

(2) Where any notarial deed has allocated immovable property to a spouse in whose name such property is not registered at the time of such allocation a deed transferring such property to such spouse shall be executed and registered in the Deeds Registry within six months of the registration of the notarial deed in accordance with the provisions of section 4.

Registration of instrument or notarial deed

6. Where an instrument executed in accordance with the provisions of section 3 or a notarial deed executed in accordance with the provisions of section 4 is presented for registration in the Deeds Registry, a signed original of such instrument or notarial deed, as the case may be, for filing in the Registry as the Registry duplicate together with two further originals or grosses or copies certified by a notary public shall be lodged.

Proprietary consequences of African marriages

7. (1) Subject to the provisions of this section and of the African Divorce Proclamation (Chapter 77) notwithstanding that the matrimonial domicile of a marriage between Africans (not being a marriage under any customary law) in Botswana such marriage shall not affect the property of the spouses which shall be held, may be disposed of, and, unless disposed of by will, shall devolve according to customary law.

(2) Notwithstanding the provisions of subsection (1) the spouses in a marriage between Africans may, where the matrimonial domicile is Botswana, prior to the solemnization of the marriage or where such marriage was solemnized prior to January, 1st 1971, on or before December, 31st 1973, by instrument in writing, signed by each of them and in the presence of two persons, one of whom shall be a District Officer, who shall subscribe thereto as witnesses, express their intention to be exempt from the provisions of subsection (1).

(3) Such instrument shall be as nearly as possible in the form set forth in the Second Schedule and shall specify whether the spouses wish to avail themselves of the provisions of this Act by excluding community of property and of profit and loss and the marital power or otherwise and if they do so avail themselves of such provisions then community of property and of profit and loss and the marital power shall be so excluded in accordance with the provisions of section 3 (1); if they do not so avail themselves the said instrument shall have the effect of an instrument executed under section 3.

(4) An instrument executed in accordance with this section shall be registered in the Deeds Registry within twenty-eight days after the execution thereof on payment of a fee of 50 cents and shall not be valid unless so registered.

Repeal of section 19 of Chapter 144

8. Section 19 of the Marriage Proclamation (Chapter 144) is repealed.

Section 15 of Proclamation No. 36 of 1960 not to apply to instruments under this Act

9. Section 15 of the Deeds Registry Proclamation, 1960, shall not apply in relation to any instrument attested under the provisions of this Act.

FIRST SCHEDULE

(Section 3)

We the undersigned A.B. and C.D., do hereby solemnly express our wish to be that our contemplated marriage with each other shall be in community of property and exempt from the provisions of the Married Persons Property Act, 1970.

(Signed) A.B.
C.D.

WITNESS: 1
2

Date:

N.B. one witness must be a District Officer.

SECOND SCHEDULE

(Section 7)

We, the undersigned A.B. and C.D. do hereby solemnly express our wish to be

- (a) that the proprietary consequences of our contemplated marriage should be regulated by the common law and not the customary law and in consequence we wish to be exempt from the provisions of section 7 (1) of the Married Persons Property Act, 1970;
- (b) to avail ourselves of the provisions of the said Act by excluding community of property and of profit and loss and the marital power.
- (c) that we do not desire to avail ourselves of the provisions of the said Act as aforesaid.

Signed A.B.
C.D.

WITNESSES 1.
2.

Date:

N.B. one witness must be a District Officer.

Either paragraph (b) or paragraph (c) of this instrument must be deleted. The deletion should be initialled by the persons signatories.

Passed by the National Assembly, this day, 3rd November, 1970.

G.T. MATENGE,
Clerk of the National Assembly