

CHAPTER 29:03
MARRIED PERSONS PROPERTY
ARRANGEMENT OF SECTIONS

SECTION

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First Schedule
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Act 69, 1970,
Act 39, 1971,
Act 17, 1975,
Act 37, 1980,
Act 11, 2008.

An Act to amend the law relating to the property of married persons and for matters incidental thereto.

[Date of Commencement: 1st January, 1971]

1. Short title

This Act may be cited as the Married Persons Property Act.

2. Interpretation In this Act, unless the context otherwise requires-
"Registrar" means the Registrar of Deeds.

3. Community of property excluded (1) Community of property and community of profit and loss or any liabilities or privileges resulting therefrom shall not attach to any marriage solemnized between spouses one of whom is domiciled in Botswana, unless such spouses have, 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 an administrative officer or justice of the peace or a commissioner of oaths, who shall subscribe thereto as witness, express their wish to be exempt from the provisions of this Act.

(2) Such instrument shall be as nearly as possible in the form set out in the First Schedule and shall be registered in the Deeds Registry within 90 days after the execution thereof and shall not be valid unless so registered:

Provided that if any instrument submitted for registration within the said period of 90 days has on the face of it any defect the Registrar shall return it to the person by whom it was submitted setting out the defects and requiring the instrument to be returned to him within such period of time, not being less than 60 days, as he may in his discretion allow, with such defects corrected; if the instrument is returned to the Registrar within the time allowed by him with the defects corrected, then it shall be registered by the Registrar and shall be valid notwithstanding that it was registered more than 90 days after execution.

4. 5. Deeds to specify allocation of property

(1) Every notarial deed executed in accordance with 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 section 4.

6. Registration of instrument or notarial deed

Where an instrument executed in accordance with section 3 or a notarial deed executed in accordance with 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 glosses or copies certified by a notary public shall be lodged.

7. Proprietary consequences of marriages of persons subject to customary law

(1) Subject to the provisions of this section and of the Dissolution of Marriages of persons subject to any Botswana Customary Law (Disposal of Property) Act, notwithstanding that the matrimonial domicile of a marriage between persons subject to a Botswana customary law (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 subsection (1), the spouses in a marriage between persons subject to customary law may, where the matrimonial domicile is in Botswana, prior to the solemnization of the marriage or where such marriage was solemnized prior to the commencement of this Act, by instrument in writing, signed by each of them and in the presence of two persons, one of whom shall be an administrative officer or justice of the peace or a commissioner of oaths, 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 one of the forms set out 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 community 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 90 days after the execution thereof and shall not be valid unless so registered:

Provided that if any instrument submitted for registration within the said period of 90 days has on the face of it any defect the Registrar shall return it to the person by whom it was submitted setting out the defects and requiring the instrument to be returned to him within such period of time, not being less than 60 days, as he may in his discretion allow with such defects corrected; if the instrument is returned to the Registrar within the time allowed by him with the defects corrected, then it shall be registered by the Registrar and shall be valid notwithstanding that it was not registered within 90 days of execution.

8. Validation of certain instruments

(1) Any instrument which, prior to 5th November, 1971, has been registered by the Registrar after the expiry of 28 days from the execution thereof shall, subject to the provisions of subsection (2), be valid notwithstanding that it was registered more than 28 days after execution.

(2) Any instrument which, prior to 5th November, 1971, has been registered by the Registrar but which has on the face of it any defect shall be returned by the Registrar to the

person by whom it was submitted setting out the defects and requiring the instrument to be returned to him within such period, not being less than 60 days, as he may in his discretion allow, with such defects corrected.

(3) If the instrument is returned to the Registrar within the time allowed by him with the defects corrected, then it shall be re-registered and shall be valid notwithstanding that it was re-registered more than 28 days after execution.

9. Section 16 of Cap. 33:02 not to apply to instruments under this Act

Section 16 of the Deeds Registry Act shall not apply in relation to any instrument attested under this Act.

FIRST SCHEDULE

(Section 3)

We, the undersigned, A.B. of and C.D. of 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.

(signed) A.B.

C.D.

Witnesses: 1.

2.

N.B. One witness must be an administrative officer, a justice of the peace or a commissioner of oaths.

SECOND SCHEDULE (section 7)

Form A

We, the undersigned, A.B. of and C.D. of 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; and
- (b) to avail ourselves of the provisions of the said Act by excluding community of property and community of profit and loss.

(signed) A.B.

C.D.

Witnesses: 1.

2.

N.B. One witness must be an administrative officer, a justice of the peace or a commissioner of oaths.

Form B

We, the undersigned, A.B. of and C.D. of 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; and
- (b) 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.

N.B. One witness must be an administrative officer, a justice of the peace or a commissioner of oaths.

