

THE MARRIED PERSONS PROPERTY (AMENDMENT) ACT, 1971

No. 39



of 1971

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 2 of Act 69 of 1970
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4. Amendment of section 7 of Act 69 of 1970
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AN ACT TO AMEND THE MARRIED PERSONS PROPERTY ACT, 1970

Date of Assent: 22.10.1971

Date of Commencement: 5.11.1971

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Married Persons Property (Amendment) Act, 1971. Short title

2. Section 2 of the Married Persons Property Act, 1970 (hereinafter referred to as the principal Act) is amended by the insertion therein in the appropriate alphabetical position of a new definition as follows — Amendment of section 2 of Act 69 of 1970

“‘Registrar’ means the Registrar of Deeds.”

3. Section 3 of the principal Act is amended as follows — Amendment of section 3 of Act 69 of 1970

- (i) by the deletion of the words “a District Officer” appearing in subsection (1) thereof and by the substitution therefor of the words “an administrative officer, a justice of the peace or a commissioner of oaths”;
- (ii) in subsection (2) thereof —

- (a) by the deletion of the word "twenty-eight" appearing therein and by the substitution therefor of the word "ninety";
- (b) by the addition thereto of the following proviso –

"Provided that if any instrument submitted for registration within the said period of ninety days shall have 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 sixty days, as he may in his discretion allow with such defects corrected: if such instrument shall be returned to the Registrar within the time allowed by him with the defects corrected then such instrument shall be registered by the Registrar and shall be valid notwithstanding that it was registered more than ninety days after execution."

Amendment
of section 7 of
Act 69 of 1970

4. Section 7 of the principal Act is amended as follows –

- (i) by the deletion of the words "a District Officer" appearing in subsection (2) thereof and by the substitution therefor of the words "an administrative officer, a justice of the peace or a commissioner of oaths";
- (ii) by the deletion of the words "in the form" appearing in subsection (3) thereof and by the substitution therefor of the words "in one of the forms"; and
- (iii) in subsection (4) thereof –
 - (a) by the deletion of the word "twenty-eight" appearing therein and by the substitution therefor of the word "ninety";
 - (b) by the addition thereto of the following proviso –

"Provided that if any instrument submitted for registration within the said period of ninety days shall have 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 sixty days, as he may in his discretion allow with such defects

corrected: if such instrument shall be returned to the Registrar within the time allowed by him with the defects corrected then such instrument shall be registered by the Registrar and shall be valid notwithstanding that it was not registered within ninety days of execution.”.

5. (1) Any instrument which, prior to the coming into force of this Act, has been registered by the Registrar after the expiry of twenty-eight days from the execution thereof shall, subject to the provisions of subsection (2), be valid notwithstanding that it was registered more than twenty-eight days after execution. Validation

(2) Any instrument which, prior to the coming into force of this Act, 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 sixty days, as he may in his discretion allow. Any instrument returned to the Registrar within the time allowed by him with the defects corrected then such instrument shall be re-registered and shall be valid notwithstanding that it was re-registered more than twenty-eight days after execution.

6. The First Schedule to the principal Act is amended as follows – Amendment of First Schedule of Act 69 of 1970

- (i) by the deletion of the words “A.B. and C.D.” appearing therein and by the substitution therefor of the words “A.B. of and C.D. of ”; and
- (ii) by the deletion of the words “a District Officer” appearing therein and by the substitution therefor of the words “an administrative officer, a justice of the peace or a commissioner of oaths”.

7. The principal Act is amended by the deletion of the Second Schedule thereto and by the substitution of a new Schedule as follows – Repeal and replacement of Second Schedule of Act 69 of 1970

“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, 1970; and

- (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.

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, 1970; 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.

Passed by the National Assembly this day, the 16th September, 1971.

G.T. MATENGE,
Clerk of the National Assembly.