

MARRIED PERSONS PROPERTY ACT, 2014

No. 12



of 2014

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SCHEDULE

An Act to provide for the property of married persons and for matters connected therewith or incidental thereto.

Date of Assent: 14.05.14

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Married Persons Property Act, 2014, and shall come into operation on such a date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires —
“community of property” means the community of property, profit and loss;

Interpretation

“property regime” means a marital property regime which can either be in community of property or out of community of property;

“Registrar” means the Registrar of Deeds; and

“repealed Act” means the Married Persons Property Act repealed under section 13 of this Act.

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

Exclusion of section 16 of Cap. 33:02

Community of
property
excluded
Cap. 29:01

4. (1) Subject to subsection (3), a marriage solemnized under the Marriage Act, where one of the spouses is domiciled in Botswana, is presumed to be out of community of property, profit and loss.

(2) In pursuance of subsection (1), spouses shall each sign an instrument in Form A set out in the First Schedule, in the presence of three witnesses, being one witness for each spouse and one of whom shall be —

- (a) an administrative officer;
- (b) a justice of the peace; or
- (c) a commissioner of oaths.

(3) Notwithstanding subsection (1), spouses who wish their property regime to be in community of property, shall each sign an instrument in Form B set out in the First Schedule, in the presence of three witnesses, being one witness for each spouse and one of whom shall be —

- (a) an administrative officer;
- (b) a justice of the peace; or
- (c) a commissioner of oaths.

Proprietary
consequences
of marriages
of persons
subject to
customary law
Cap. 29:01
Cap. 29:05

5. (1) Notwithstanding that a marriage has been solemnized under the Marriage Act, the provisions of this Act shall not apply to the property of spouses who are subject to Botswana customary law.

(2) Subject to the provisions of this section and of the Dissolution of Marriages of Persons Subject to Customary Law (Disposal of Property) Act, the property of spouses who are subject to customary law shall be held, disposed of, and devolve according to customary law, unless disposed of by will.

(3) Notwithstanding subsections (1) and (2), the spouses in a marriage between persons subject to customary law may, prior to the solemnisation of the marriage, express their wish to exclude customary law application to their proprietary rights, by an instrument in writing —

- (a) signed by each of them; and
- (b) in the presence of three witnesses, being one witness for each spouse and one of whom shall be —
 - (i) an administrative officer,
 - (ii) a justice of the peace, or
 - (iii) a commissioner of oaths.

(4) An instrument under subsection (3) shall be as set out in the Second Schedule and shall state whether the spouses wish to avail themselves to the provisions of this Act, and by —

- (a) Form A the spouses shall exclude the application of customary law, and opt for a marriage out of community of property; and
- (b) Form B the spouses shall exclude the application of customary law, and opt for a marriage in community of property.

6. (1) An instrument signed under section 4 or 5 shall be registered in the Deeds Registry by the Registrar of Marriages, within 180 days after the execution of such instrument, and shall not be valid unless so registered.

Registration of instrument with Deeds Registry

(2) Where an instrument submitted for registration in accordance with subsection (1), has any defect, the Registrar shall return it to the Registrar of Marriages, setting out the defect and requiring the instrument to be rectified and returned to him or her, within a period which the Registrar may allow, which time shall not be less than 90 days.

(3) The instrument returned to the Registrar of Marriages under subsection (2) shall be registered by the Registrar, and shall be valid, notwithstanding that it was registered more than 180 days after execution.

7. The Registrar of Marriages or the spouses may apply to the High Court for an order directing the Registrar to correct an error on the instrument, where an error is discovered on an instrument after registration.

Correction of errors on instrument

8. (1) A person, whether married before or after the commencement of this Act may, apply to the High Court for leave to change the property regime which applies to his or her marriage, and the court may, if satisfied —

Change of property regime

- (a) that there are sound reasons for the proposed change;
- (b) that the continuation of the existing property regime is no longer economically and socially appropriate for either of the spouses;
- (c) that the proposed change is not in bad faith;
- (d) that sufficient notice of the proposed change has been given to all the creditors of each of the spouses;
- (e) where the application is made by one spouse, that sufficient notice is given to the other spouse;
- (f) that publication of the proposed change has been made in three consecutive issues of the *Gazette* and a newspaper of national circulation; and

(g) that no other person will be prejudiced by the proposed change, order that such property regime shall no longer apply to their marriage and authorise the spouses to enter into a notarial deed by which their future property regime is to be regulated, and on such terms as the court may think fit.

(2) A notarial deed entered into, under subsection (1) shall be registered in the Deeds Registry within 28 days after its execution, and shall not be valid, unless so registered.

(3) A property regime change under this section shall not be made more than twice, during the subsistence of a marriage.

(4) The Registrar shall, within a reasonable time notify the Registrar of Marriages of a change of regime made under this Act.

Registration of instrument or notarial deed

9. (1) Where an instrument executed in accordance with section 4 or 5, or a notarial deed executed in accordance with section 8 is presented for registration in the Deeds Registry, a signed original of the instrument or notarial deed, as the case may be, shall be lodged for filing in the Registry, as the Registry duplicate, together with two further originals.

(2) A notarial deed submitted for registration under subsection (1) shall be accompanied by a registered copy of the instrument signed at section 4 or 5, which instrument shall be submitted for endorsement of the change of regime.

Validation of certain instruments

10. (1) Any instrument which, after 1st January 1971, has been executed in accordance with section 3 and 7 of the repealed Act, but has not been registered in the Deeds Registry within the stipulated time, shall, subject to the provisions of subsection (2), be valid, notwithstanding that it was not registered after execution.

(2) Any instrument which, after 1st January 1971, has not been registered with the Deeds Registry in accordance with section 3 and 7 of the repealed Act, shall within a period of 18 months after the commencement of this Act, be registered by the Registrar of Marriages in the Deeds Registry.

(3) At the expiry of the period referred to in subsection (2), an instrument which is not registered shall be null and void.

Power of Minister to amend Schedule

11. The Minister may by Order published in the *Gazette*, amend the Schedule.

Regulations

12. The Minister may make regulations prescribing anything under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

Repeal of Cap. 29:03

13. The Married Persons Property Act is hereby repealed.

Savings provision

14. Notwithstanding the repeal effected under section 14, any instrument made under the repealed Act shall continue to have effect, as if made under this Act, to the extent that it is not inconsistent with this Act.

FIRST SCHEDULE

FORM A

MARRIAGE OUT OF COMMUNITY OF PROPERTY

(section 4 (2))

We, the undersigned,of and of do
(Full names) (Town/village) (Full names) (Town/Village)
hereby declare that our contemplated marriage with each other shall be out of community
of property.

Signature: I.D. Number:.....

..... I.D. Number:.....

Witnesses: 1. I.D. Number:.....

2. I.D. Number:.....

3. I.D. Number:.....

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

{ENDORSEMENT PAGE}

FORM B

MARRIAGE IN COMMUNITY OF PROPERTY
(section 4 (3))

We, the undersigned,of and of do
(Full names) (Town/village) (Full names) (Town/Village)
hereby solemnly express our wish to be that our contemplated marriage with each
other shall be in community of property.

Signature: I.D. Number:.....
..... I.D. Number:.....

Witnesses: 1. I.D. Number:.....
2. I.D. Number:.....
3. I.D. Number:.....

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

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SECOND SCHEDULE

FORM A

EXCLUSION OF CUSTOMARY LAW AND OPTION FOR MARRIAGE
OUT OF COMMUNITY OF PROPERTY

(section 5 (4) (a))

We, the undersigned,of and of do
(Full names) (Town/village) (Full names) (Town/Village)
hereby solemnly express our wish —

- (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 5(1) and 5(2) of the Married Persons Property Act; and
- (b) to avail ourselves of the provisions of the said Act and opt for a marriage out of community of property.

Signature: I.D. Number:.....

..... I.D. Number:.....

Witnesses: 1. I.D. Number:.....

2. I.D. Number:.....

3. I.D. Number:.....

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

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FORM B

EXCLUSION OF CUSTOMARY LAW AND OPTION FOR
MARRIAGE IN COMMUNITY OF PROPERTY
(section 5 (4) (b))

We, the undersigned,of and of do
(Full names) (Town/village) (Full names) (Town/Village)
hereby solemnly express our wish —

- (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 5(1) and 5(2) of the Married Persons Property Act; and
- (b) that we do not desire to avail ourselves of the provisions of the said Act and opt for a marriage in community of property.

Signature: I.D. Number:.....
..... I.D. Number:.....

Witnesses: 1. I.D. Number:.....
2. I.D. Number:.....
3. I.D. Number:.....

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

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PASSED by the National Assembly this 2nd day of April, 2014.

BARBARA N. DITHAPO,
Clerk of the National Assembly