

MARRIED PERSONS PROPERTY (AMENDMENT) ACT, 2021

No. 20



of 2021

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of section 7 of Cap. 29:03
3. Substitution of section 10 of the Act
4. Insertion of sections 10A, 10B and 10C in the Act

An Act to amend the Married Persons Property Act.

Date of Assent: 01.11.2021

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

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| <p>1. This Act may be cited as the Married Persons Property (Amendment) Act, 2021 and shall come into operation on such date as the Minister may, by Order published in the <i>Gazette</i>, appoint.</p> | <p>Short title and commencement</p> |
| <p>2. The Married Persons Property Act, (hereinafter referred to as "the Act") is amended by substituting for section 7, the following new section —</p> <p>"Correction of errors on instrument
Cap. 33:02</p> <p>7. The Registrar shall rectify any error discovered on an instrument after registration in accordance with the Deeds Registry Act."</p> | <p>Amendment of section 7 of Cap. 29:03</p> |
| <p>3. The Act is amended by substituting for section 10, the following new section —</p> <p>"Validation of unregistered instruments</p> <p>10. (1) Any instrument which, after 1st January, 1971, has been executed in accordance with the repealed Act, but has not been registered in the Deeds Registry shall, subject to the provisions of subsection (2), be valid, notwithstanding that it was not registered after execution.</p> <p>(2) Any instrument which, after 1st January, 1971, has not been registered in the Deeds Registry in accordance with the repealed Act, shall within a period of 24 months after the commencement of this Act, be registered by the Registrar of Marriages in the Deeds Registry."</p> <p>(3) At the expiry of the period referred to in subsection (2) an instrument which is not registered shall be null and void."</p> | <p>Substitution of section 10 of the Act</p> |
| <p>4. The Act is amended by inserting immediately after section 10, the following new sections —</p> | <p>Insertion of sections 10A, 10B and 10C in the Act</p> |

“Validation
for lost or
destroyed
instruments

10A. (1) If any instrument executed under the repealed Act but not registered in the Deeds Registry is lost or destroyed the spouses shall within a period of 24 months after the commencement of this Act, make an application to the Registrar of Marriages for a replacement instrument.

(2) An application under subsection (1) shall be accompanied by —

(a) an affidavit of both spouses stating —

(i) the property regime,

(ii) that creditors of each spouse deal with such spouse based on that property regime,

(iii) that the instrument is actually destroyed or lost and cannot be found though diligent search has been made therefor, and further, setting forth, where possible, the circumstances under which it was destroyed or lost, and

(iv) that the instrument was never registered with the Registrar;

(b) a certified copy of the spouses' marriage certificate; and

(c) any other document that the Registrar of Marriages may consider necessary to prove property regime.

(3) Where the Registrar of Marriages is satisfied that the requirements of subsection (2) have been met, the Registrar of Marriages shall cause the spouses to sign, in accordance with the provisions of this Act —

(a) where the spouses' property is not subject to customary law, Form B set out in Schedule 1; or

(b) where the spouses' property is subject to customary law, Form B set out in Schedule 2.

(4) An instrument signed in pursuance of this section shall be registered by the Registrar of Marriages in accordance with the provisions of this Act.

Validation
where no
instrument
was issued

10B. (1) Where the marriage between the spouses was out of community of property in accordance with the repealed Act or between a citizen and non-citizen and no instrument was issued for the same, the spouses shall within a period of 24 months after the commencement of this Act, make an application to the Registrar of Marriages for issuance of an instrument proving the property regime.

(2) An application under subsection (1) shall be accompanied by —

(a) an affidavit of both spouses stating —

(i) the property regime,

(ii) that creditors of each of the spouse deal with such spouse based on that property regime, and

(iii) that the spouses were never issued with an instrument;

(b) a certified copy of the spouses' marriage certificate, and

(c) any other document that the Registrar of Marriages may consider necessary to prove property regime.

(3) Where the Registrar of Marriages is satisfied that the requirements of subsection (2) have been met, the Registrar of Marriages shall cause the spouses to sign, in accordance with the provisions of this Act —

- (a) where the spouses' property is not subject to customary law, Form A set out in Schedule 1; or
- (b) where the spouses' property is subject to customary law, Form A set out in Schedule 2.

(4) An instrument signed in pursuance of this section shall be registered by the Registrar of Marriages in accordance with the provisions of this Act.

Offence and
penalty

10C. Any person who gives false information on an affidavit sworn under sections 10A and 10B commits the offence of perjury and shall be liable to a fine not exceeding P20 000 or to imprisonment for a term not exceeding seven years, or to both.”.

PASSED by the National Assembly this 16th day of August, 2021.

BARBARA N. DITHAPO,
Clerk of the National Assembly.