

LAWS OF GUYANA

MARRIED PERSONS (PROPERTY) ACT

CHAPTER 45:04

Act
12 of 1904
Amended by

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Note
on
Subsidiary Legislation

This Chapter contains no subsidiary legislation.

CHAPTER 45:04**MARRIED PERSONS (PROPERTY) ACT**

ARRANGEMENT OF SECTIONS

SECTION

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1929 Ed.
c. 144
1953 Ed.
c. 169

CHAPTER 45:04

MARRIED PERSONS (PROPERTY) ACT

12 of 1904 **An Act to amend the law relating to the property of Married Persons.**

[20TH AUGUST, 1904]

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

Interpretation. **2.** In this Act—

“contract” includes the acceptance of any trust, or the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities, by reason of any breach of trust committed by any married woman, being a trustee or executrix or administratrix, either before or after her marriage, and her husband shall not be subject to those liabilities unless he has acted or intermeddled in the trust or administration;

“property” includes a right of action.

Act not to affect rights acquired under marriages solemnised before its commencement. **3.** The respective matrimonial rights of any husband and wife with regard to property arising under and by virtue of any marriage solemnised before the commencement of this Act, and all rights which any other person has acquired or become entitled to under or by virtue of that marriage (except where hereinafter otherwise expressly provided) shall be governed by the law which would have been applicable thereto if this Act had not been passed.

Right of persons married after **4.** (1) The respective matrimonial rights of every husband and wife, domiciled or resident in Guyana and

the commencement of this Act as to movable property; as to immovable property.

married after the commencement of this Act, in, to, or in respect of movable property, during the subsistence of the marriage and of that domicile or residence, shall be governed by this Act.

(2) The respective matrimonial rights of every husband and wife married after the commencement of this Act, in, to, or in respect of any immovable property situate in Guyana, during the marriage, shall be governed by this Act.

Community of goods not a consequence of marriage.

5. There shall be no community of goods between husband and wife married after the commencement of this Act as a consequence of marriage, either in respect of movable or immovable property.

Loans by wife to husband or *vice versa*.

6. (1) Any money or other estate of the wife, lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, unless secured by a conventional mortgage, shall be treated as assets of the husband's estate in case of his insolvency, but the wife's claim in respect thereof shall rank concurrently with the claims of all other unsecured creditors on his estate.

(2) The last preceding subsection shall apply, *mutatis mutandis*, with respect to any money or other estate of the husband lent or entrusted by him to his wife for the purpose of any trade or business carried on by her or otherwise:

Provided that nothing in this section shall affect the rights of any married woman in respect of her ante-nuptial contract under the Insolvency Act.

c. 12:21

Money or property derived from housekeeping. [20 of 1990]

6A. Where any question arises as to the right of a husband or wife to money derived from any allowance made by the husband or wife for the expenses of the matrimonial home or for similar purposes, or to any property acquired out of the money, the money or property shall, in the absence of

any agreement between them to the contrary, be treated as belonging to the husband and the wife in equal shares.

As to property
to be
transferred to a
married
woman.
[45 of 1952]

7. All deposits in any post office or other savings bank, or in any other bank, and all shares, stock, bonds, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan, society, which shall be allotted to, or placed, registered, or transferred to or into, or made to stand in, the sole name of any married woman married after the commencement of this Act shall be deemed, unless and until the contrary be shown, to be her property, in respect of which, so far as any liability is incident thereto, she shall alone be liable:

Provided that nothing in this Act shall require or authorise any corporation or joint stock company to admit any married woman to be a holder of any shares or stock therein to which any liability is incident, contrary to any Act, charter, by-law, articles of association, or deed of settlement regulating that corporation or company.

Investments in
joint names of
married
women and
others.

8. The provisions hereinbefore contained as to deposits in any post office or other savings bank or in any other bank, shares, stock, bonds, debentures, debenture stock or other interests of or in any corporation, company, public body, or society aforesaid respectively, which shall be allotted to or placed, registered, or transferred to or into, or made to stand in the sole name of a married woman, married after the commencement of this Act, shall respectively extend and apply, so far as relates to the estate, right, title, or interest of the married woman, to any of the particulars aforesaid standing in, or allotted to, placed, registered, or transferred to or into, or made to stand in the name of any married woman, married after the commencement of this Act, jointly with any person or persons other than her husband.

As to property standing in the joint names of a married woman and others.

9. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any deposit aforesaid, or of any share, stock, bond, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any corporation, company, public body, or society aforesaid, at any time hereafter standing in the sole name of any married woman married after the commencement of this Act, or in the joint names of that married woman and any other person or persons not being her husband.

Investments by spouse of money of other spouse without consent; gifts in fraud of creditors.
[20 of 1990]

10. (1) Where any deposit or investment is made by a spouse by means of money of the other spouse without his or her consent, the High Court may, upon an application under section 15, order the deposit or investment and the dividends thereof to be transferred and paid to the other spouse.

(2) Nothing in this Act shall give validity as against the creditors of a person to any gift by that person to his or her spouse of any property, which, after the gift, shall continue to be in the order and disposition or reputed ownership of such person, or to any deposit or other investment of moneys of such person made by or in the name of his or her spouse in fraud of his or her creditors; but any moneys so deposited or invested may be followed as if this Act had not been passed.

Moneys payable under policy of assurance not to form part of the estate of the assured.
[45 of 1952]

11. (1) A married woman may effect a policy of assurance upon her own life or on the life of her husband for her own benefit, and the policy and all benefit thereof shall enure accordingly.

(2) A policy of assurance effected by any man on his own life and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of

the objects therein named, and the moneys payable under the policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the assured, or be subject to his or her debts:

Provided that, if it is proved that the policy was effected and the premiums paid with intent to defraud the creditors of the assured, they shall be entitled to receive out of the moneys payable under the policy a sum equal to the premiums so paid.

(3) The assured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof and for the investment of the moneys payable thereunder.

(4) In default of the appointment of a trustee, the policy, immediately on its being effected, shall vest in the assured and his or her legal representatives in trust for the purposes aforesaid.

(5) If, at the time of the death of the assured, or at any time afterwards, there is no trustee, or it is expedient to appoint a new trustee or new trustees, a trustee or trustees, or a new trustee or new trustees, may be appointed by the High Court or a judge thereof on application by any party interested.

(6) The receipt of a trustee or trustees duly appointed, or, in default of that appointment, or in default of notice to the insurance office, the receipt of the legal representative of the assured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

Remedies of
married
woman for
protection and
security of
separate
property.
[45 of 1952]

12. (1) Every woman married after the commencement of this Act shall have, in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject as regards her husband to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings for the protection and security of her own property, in the same manner as if she were unmarried, but except as aforesaid, no husband or wife shall be entitled to sue the other for tort.

(2) In any indictment or other proceeding under this section it shall be sufficient to allege the property to be her property; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any Act or rule of law to the contrary notwithstanding:

Provided that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act, while they are living together, as to or concerning any property claimed by her, or while they are living apart as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless that property has been wrongfully taken by the husband when leaving or deserting his wife, or about to leave or desert her.

Proceedings for
divorce.

(3) Every married woman, whether married before or after the commencement of this Act, shall have the right to sue and may be sued in her own name for a divorce or judicial separation without the appointment of a next friend.

Wife's ante-
nuptial debts
and liabilities.
[45 of 1952]

13. A woman married after the commencement of this Act shall, after her marriage, continue to be liable for all debts contracted, and all contracts entered into or wrongs committed by her before marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories under and by virtue of the Acts relating to joint stock companies,

and she may be sued for those debts and for any liability in damages or otherwise under any contract, or in respect of those wrongs.

Act of wife
liable to
criminal
proceedings.

14. A wife doing any act with respect to any property of her husband, which, if done by him with respect to her property would make him liable to criminal proceedings by her under this Act, shall in like manner be liable to criminal proceedings by her husband.

Questions
between
husband and
wife as to
property to be
settled in a
summary way.
[20 of 1990]

15. (1) In any question between husband and wife as to the title to or possession of property, either party, or any bank, corporation, company, public body, or society, aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply in a summary way to a judge of the High Court, and the judge may make any order with respect to the property in dispute and as to the costs of and consequent on the application as he thinks fit, or may direct the application to stand over from time to time, and any inquiry touching the matters in question to be made in any manner he thinks fit.

(2) For the avoidance of doubt it is hereby declared that any power conferred by subsection (1) to make orders with respect to any property includes power to order a sale of the property.

(3) Any right of a party to a marriage under subsection (1) to apply to a judge includes the right to make such an application where it is claimed by one party (in this section called "the claimant party") that the other party (in this section called "the respondent party") has had in his possession or under his control —

- (a) money to which, or to a share of which the claimant party was beneficially entitled (whether by reason that it represented the

proceeds of property to which, or to an interest in which, the claimant party was beneficially entitled, or for any other reason); or

- (b) property (other than money) to which, or to an interest in which, the claimant party was beneficially entitled,

and that either that money or other property has ceased to be in the respondent party's possession or under his control or that the claimant party does not know whether it is still in the possession or under the control of the respondent party.

(4) Where, on an application made to a judge by virtue of subsection (3), the judge is satisfied—

- (a) that the respondent party has had in his possession or under his control money or other property as mentioned in subsection (3)(a) or (b); and
- (b) that he has not made to the claimant party in respect of that money or other property such payment or disposition as would have been appropriate in the circumstances,

the power to make orders under that subsection shall be extended in accordance with subsection (5).

(5) Where subsection (4) applies, the power to make orders under subsection (1) includes power for the judge to order the respondent party to pay to the claimant party—

- (a) in a case falling within subsection (3)(a), such sum in respect of the money to which the application relates, or the claimant party's share thereof, as the case may be; or
- (b) in a case falling within subsection (3)(b), such sum in respect of the value of the property to which the application relates, or the claimant party's interest therein, as the case may be,

as the judge may consider appropriate.

(6) Where on an application by virtue of subsection (3) it appears to the judge that there is any property which—

- (a) represents the whole or part of the money or property in question; and
- (b) is property in respect of which an order could have been made under that subsection if any application had been made by the claimant party thereunder in a question as to the title to or possession of that property,

the judge (either in substitution for or in addition to the making of an order in accordance with subsection (5)) may make any order under that subsection in respect of that property which he could have made on such an application as is mentioned in paragraph (b).

(7) Any power of a judge under subsection (1) to direct inquiries or give any other directions in relation to an application under that subsection shall be exercisable in relation to an application made under subsection (3).

(8) In subsection (4) "disposition" does not include any provision contained in a will, but, with that exception, includes any conveyance, assurance or gift of property whether made by an instrument or otherwise.

(9) When hearing an application, where the parties were living together for less than five years, in respect of property in dispute under subsection (1) the judge in making such order with respect to the property as he thinks fit shall take into consideration and quantify, in such manner and to such extent as may seem just to him in all the circumstances of the case, the contribution made by a spouse to the marriage and to the welfare of the family, including any contribution made by looking after the home and caring for the family:

Provided that the judge shall award the claimant party, where the parties were living together:

- (a) for five or more years and where the claimant party was not working, one-third;
- (b) for five or more years and where the claimant party was working, one-half,

of the property acquired during the marriage, but the judge in his discretion, may, for good and sufficient reason, vary such awards.

(10) For the purposes of this section and section 6A any reference to—

- (a) a wife shall include a reference to a single woman living together with a single man in a common law union;
- (b) a husband shall include a reference to a single man living together with a

single woman in a common law union;

Provided that only one such union shall be considered for any benefit.

(11) For the purposes of subsection (10) any reference to a single woman or a single man shall include a reference to a widow or widower or to a woman or man who is divorced as the case may be:

Provided that—

- (a) any order of a judge to be made under this section shall be subject to appeal in the same way as an order made by the same judge in a suit pending in the Court would be subject; and
- (b) the judge, if either party so requires, may hear the application in chambers; and
- (c) the bank, corporation, company, public body, or society aforesaid, shall, in the matter of the application for the purposes of costs or otherwise, be treated as a stakeholder only.

“Dissolution or annulment of the marriage or union.

[11 of 2014

12 of 2014]

15A. An application may be made to a Judge under section 6A and section 15 by either of the parties to the marriage or the union notwithstanding that their marriage has been dissolved or annulled, or their union ended, if the application is made within three years after the dissolution or annulment of the marriage or the end of the union.”.

Married woman as an executrix or trustee.

16. A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any annuity or deposit aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, bond, debenture, debenture stock, or other benefit, right, claim, or

other interest, of or in any corporation, company, public body, or society aforesaid, and may transport, or transfer, or join in transporting or transferring, any immovable property or mortgages thereof in that character without her husband as if she were unmarried.

Saving of existing settlements and the power to make future settlements.

17. Nothing in this Act contained shall interfere with or affect any ante-nuptial contract or settlement, or agreement for an ante-nuptial contract or settlement, made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or hereafter to be attached to the enjoyment of any property or income by any person under any ante-nuptial contract or settlement, or will or other instrument; but no restriction against anticipation contained in any ante-nuptial contract or settlement, or agreement for an ante-nuptial contract or settlement, of a person's own property to be made or entered into by that person, shall have any validity against debts contracted by that person before marriage.

Legal representative of married woman.
[45 of 1952]

18. For the purposes of this Act, the legal representative of any married woman shall, in respect of her estate, have the same rights and liabilities and be subject to the same jurisdiction, as she would be if she were living.