

FAMILY CODE OF THE RUSSIAN FEDERATION¹

English translation by M. Antokolskaia

CHAPTER 7. STATUTORY REGIME OF PROPERTY OF THE SPOUSES.

Article 33. Definition of Statutory Regime of Property of the Spouses.

1. The statutory regime of matrimonial property is the regime of community of property. The statutory regime of matrimonial property regime operates unless the otherwise is established by a marital agreement.
2. Rights and duties of the spouses to possess, use and dispose of assets which belongs to the joint property of the farmer household, are defined by Articles 257 and 258 of the Civil Code of Russian Federation.

Article 34. Community of Property of the Spouses.

1. Assets acquired by the spouses during marriage are their community property.
2. Community property includes assets acquired by spouses during marriage (community property of the spouses) is the earnings of each of the spouses from labour and business activity; income from the exploitation of objects of intellectual property; received pensions, social security benefits and other payments with no specific purpose (for example, a material allowance received from an employer; or compensation for personal injury received from a tortfeasor, etc). Community property also includes movable and immovable assets; securities; shares, contributions, participatory shares deposited in banks or commercial organisations and any other assets acquired during the marriage, irrespective of in whose name the assets have been acquired or in whose name the money has been deposited.
3. The right to community property also belongs to the spouse who during the marriage was a stay at home spouse: ran the household, took care of the children, or due to other justifiable reasons had no independent income.

Article 35. Possession, Use and Disposition of the Community Property.

1. Possession, use and disposition of the community property of the spouses is effectuated by joint consent of the spouses.
2. When one of the spouses enters a transaction with regard to disposition of community property of the spouses, it is presupposed that he acts with the consent of the other spouse.

A transaction entered by one of the spouses with regard to disposition of community property of the spouses may be declared by a court to be invalid for reasons of the absence of the

¹ Adopted on 8 December 1995, in force since 1 March 1996 *Sobranie Zakonodatel'stva Rossiiskoi Federatsii*, 1996, No. 1, item 15.

consent of the other spouse only upon demand thereof and only in cases when it is proved that the other party to the transaction new or obviously should have known about the absence of consent of the other spouse to enter the particular transaction.

3. A transaction entered by one of the spouses with regard to disposition of immovable property, or a transaction requiring the form of a Notarial Deed and (or) registration according to the rules stated by law, require consent of the other spouse certified by a notary.

A spouse, whose certified consent to the aforementioned transaction has not been received, is entitled to request the court to declare a transaction invalid within one year from the moment when he became aware or should have become aware of the transaction.

Article 36. Property of Each of the Spouses.

1. Assets that belonged to each of the spouses before the marriage; as well as assets acquired by each of the spouses during the marriage as a gift, by way of inheritance or by way of other transactions without consideration (assets of each of the spouses) are regarded the property of that spouse.

2. Assets for personal use (clothing, footwear, etc.) with the exception of jewellery and other luxury items, although acquired during the marriage and paid from community means of the spouses, are regarded as property of the spouse who used them.

3. Exclusive right to an object of intellectual property created by one of the spouse, belongs to the author of such object.

Article 37. Declaration of Assets of Each of the Spouses as Community Property.

Assets of each of the Spouses can be declared their community property provided that it is established that during the marriage the value of these assets has significantly increased at the expense of the community assets, or the personal assets of the other spouse, or the labour of the other spouse (e.g. renovation, rebuilding or reconstruction, etc).

Article 38. Division of Community Property of the Spouses.

1. Community property of the spouses can be divided during the marriage as well as in case of dissolution of marriage and also when the creditor of one of the spouses demands dissolution of the community property in order to recover a debt from the share of the debtor spouse within the community property of the spouses.

2. Community property of the spouses can be divided by mutual agreement. If spouses wish, their agreement on division of common assent can be certified by a notary.

3. If the spouses disagree, division of the property and determination of the shared interest of the spouses in that property can be made by a court order.

In dividing up the spouses' community property the court can, upon request determine which assets should be transferred to each spouse. If the value of the assets transferred to one of the spouses exceeds this spouse's share, the court can order that the other spouse should receive monetary or another type of compensation.

4. Assets, acquired by each of the spouses during the period when they lived separately after *de facto* termination of their marital relationship can be declared by the court to be the *personal* assets of each spouse.

5. Assets acquired exclusively for the needs of minor children (clothing, footwear, study materials and sporting assets, musical instruments, child library etc.) are not subjected to division and are attributed without compensation to the spouse with whom the children reside.

Bank deposits in the name of the common minor children paid into by the spouses from their community assets are considered to be the property of these children and are not taken into account during the division of community property of the spouses.

6. Where the division of community property of the spouses has been made during the marriage, the common assets that have not been divided, as well as the assets acquired by the spouses during the marriage after the division of community property, are considered to be part of their community property.

7. The period of prescription for claims is a three years period of limitation of action in connection with claims of the divorced spouses with regard to division of their community property.

Article 39. Determination of Shares by Division of Community Property of the Spouses.

1. During the division of community property the shares of the spouses are treated as equal, unless provided otherwise by agreement between the spouses.

2. The court may deviate from the principle of equality of the shares of the spouses in their community property if the interests of minor children and (or) the heavily weighing interest of one of the spouses so requires, in particular when the other spouse has no income, without good reason, or has squandered property to the detriment of the family income.

CHAPTER 8. CONTRACTUAL REGIME OF PROPERTY OF SPOUSES

Article 40. Marital agreement

Marital agreement is an agreement between prospective or current spouses governing patrimonial rights and duties of the spouses during the marriage and after its dissolution.

Article 41. Conclusion of Marital agreement

1. A marital agreement can be concluded both before the state registration of marriage and at any time during the marriage.

A pre-marital agreement enters into force on the date of the state registration of marriage.

2. A marital agreement shall be concluded in writing and must take the form of an Notarial Deed.

Article 42. Content of Marital agreement

1. Through a marital agreement, spouses can modify the statutory regime of community of property (article 34 of the present Code); establish a personal regime of joint or shared property, or a regime of separation of property for all of their property, or for its particular parts, or for the property of each of the spouses.

A marital agreement can be concluded with regard to current and future property of the spouses.

Spouses can determine by marital agreement their rights and duties regarding mutual maintenance, ways of participation in the each other incomes, and each other's contribution to family expenses; determine assets that shall be attributed to each of them in case of divorce; and also include into a marital agreement any other proposals regarding their patrimonial relationships.

2. Rights and duties of the spouses determined by marital agreement may be limited in time or be made conditional upon occurrence or non occurrence of particular circumstances.

3. A marital agreement may not limit passive and active civil capacity of the spouses or limit their ability to resort to courts in order to protect their rights; regulate their personal non-patrimonial relationships; regulate rights and duties with regard to children; contain provisions limiting the rights of the spouse, lacking essential means and the capability to work because of a disability to receive maintenance; contain other provisions which place one of the spouses in an extremely unfavourable position or violate general principles of family law.

Article 43. Alteration and Dissolution of Marital Agreement

1. A marital **agreement** can be altered or dissolved at any time by mutual consent of the spouses. The agreement regarding alteration or dissolution requires the same form as the marital agreement self.

Unilateral termination of the duty to perform a marital agreement is not allowed.

2. Upon application of one of the spouses, the court can alter or dissolve a marital **agreement** on the grounds and according to the rules provided by the Civil Code of Russian Federation for alteration and dissolution of contracts.

3. Operation of the marital **agreement** terminates from the moment of termination of marriage, (article 25 of the present Code), except for the obligation provided for by marital **agreement** for the period after the termination of marriage.

Article 44. Declaration of Marital Agreement Invalid.

1. A marital agreement can be declared by the court fully or partially invalid upon the grounds provided for by the Civil Code of Russian Federation for invalidity of transactions.

2. Upon unilateral application of one of the spouses the court may declare a marital **agreement** fully or partially invalid if the provisions of the agreement place one of the

spouses in an extremely unfavourable position. Provisions of a marital agreement violating other requirements of Para. 3 Article 42 of the present Code are void.

CHAPTER 9. RESPONSIBILITY OF THE SPOUSES FOR DEBTS

Article 45. Recovery of Debts form the Assets of the Spouses

1. Debts of a spouse can be recovered only from the assets of this spouse. If the spouse's personal assets appear to be insufficient, the creditor can request the determination of the share to which the debtor-spouse is entitled, upon division of community property, in order to recover his debt from that share.

2. Common debts of the spouses shall be recovered from the community assets of the spouses. Personal debts of one of the spouses shall be recovered from the community assets if the court has established that all the assets received as consideration for this debt were used for the needs of the family. If such assets appear to be insufficient, both spouses are jointly and severally liable for aforementioned debts by their personal property.

If the criminal court has established that community property of the spouses has been acquired or increased by criminal means recovery can be made from the whole community property or a part thereof, respectively.

3. Liability of the spouses for damages caused by their (minor) children shall be determined by civil legislation. Recovery of related damages from the assets of the spouses shall be made according to Para 2 of the present Article.

Article 46. Protection of Rights of the Creditors by Conclusion, Alteration and Dissolution of marital agreement

1. A spouse is obliged to inform his creditor(s) about conclusion, alteration and termination of a marital agreement. If this duty has been violated, the spouse is liable for his debts notwithstanding the content of the marital agreement.

2. Creditor(s) of the debtor-spouse can demand the alteration or dissolution of their contract with that spouse upon significant change of the circumstances according to the rules provided by Articles 451-453 of the Civil Code of Russian Federation.