

CAYMAN ISLANDS



MARRIED WOMEN'S PROPERTY LAW

(1997 Revision)

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CAYMAN ISLANDS**MARRIED WOMEN'S PROPERTY LAW****(1997 Revision)****Arrangement of Sections**

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MARRIED WOMEN'S PROPERTY LAW

(1997 Revision)

ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Law may be cited as the *Married Women's Property Law (1997 Revision)*.

Capacity of married women

2. Subject to this Law, and, as respects actions in tort between husband and wife, to section 10, a married woman shall —
- (a) be capable of acquiring, holding and disposing of, any property;
 - (b) be capable of rendering herself, and being rendered, liable in respect of any tort, contract, debt or obligation;
 - (c) be capable of suing and being sued, either in tort or in contract or otherwise; and
 - (d) be subject to the law relating to bankruptcy and to the enforcement of judgments and orders,
- in all respects as if she were a *feme sole*.

Property of married women

3. (1) Subject to this Law, all property which —
- (a) immediately before 1st June, 1941, was the separate property of a married woman or held for her separate use in equity;

- (b) belongs at the time of her marriage to a woman married on or after 1st June, 1941; or
- (c) on or after 1st June, 1941, is acquired by or devolves upon a married woman,

shall belong to her in all respects as if she were a *feme sole* and may be disposed of accordingly:

Provided that nothing in this subsection shall interfere with or render inoperative any restriction upon anticipation or alienation attached to the enjoyment of any property by virtue of any provision attaching such a restriction, contained in any law passed before 1st June, 1941 or in any instrument executed before 1st September, 1941.

- (2) Any instrument executed on or after 1st September, 1941, shall, insofar as it purports to attach to the enjoyment of any property by a woman any restriction upon anticipation or alienation which could not have been attached to the enjoyment of that property by a man, be void.
- (3) For the purposes of the provisions of this section relating to restrictions upon anticipation or alienation —
 - (a) an instrument attaching such a restriction as aforesaid executed on or after 1st September, 1941, in pursuance of an obligation imposed before that date to attach such a restriction shall be deemed to have been executed before said 1st September, 1941;
 - (b) a provision contained in an instrument made in exercise of a special power of appointment shall be deemed to be contained in that instrument only and not in the instrument by which the power was created; and
 - (c) the will of any testator who dies after 31st December, 1945, shall, notwithstanding the actual date of the execution thereof, be deemed to have been executed after 1st September, 1941.

Abolition of husband's liability for wife's torts and ante-nuptial contracts, debts and obligations

- 4. Subject to this Law, the husband of a married woman shall not, by reason only of his being her husband, be liable —
 - (a) in respect of any tort committed by her whether before or after the marriage, or in respect of any contract entered into, or debt or obligation incurred by her before the marriage; or
 - (b) to be sued, or made a party to any legal proceeding brought, in respect of any such tort, contract, debt or obligation.

Provisions as to husband

- 5. Nothing in this Law —



- (a) renders the husband of a married woman liable in respect of any contract entered into, or debt or obligation incurred, by her after the marriage in respect of which he would not have been liable if this Law had not been passed;
- (b) exempts the husband of a married woman from liability in respect of any contract entered into, debt or obligation, not being a debt or obligation arising out of the commission of a tort, incurred by her after the marriage in respect of which he would have been liable if this Law had not been passed;
- (c) prevents a husband and wife from acquiring, holding and disposing of, any property jointly or as tenants in common, or from rendering themselves, or being rendered, jointly liable in respect of any tort, contract, debt or obligation, and from suing or being sued either in tort or contract or otherwise, in like manner as if they were not married; or
- (d) prevents the exercise of any joint power given to a husband and wife.

As to stock, etc., to be transferred, etc., to a married woman

6. All sums forming part of the public stocks or funds of Great Britain or the Islands or of any other stocks or funds transferable in the books of the Bank of England or any other bank, all such deposits and annuities respectively as are mentioned in section 7, all debentures issued under any law of the Islands and all shares, stock, debentures, debenture stock and other interests of or in any such corporation, company, public body or society, which shall be allotted to, or placed, registered or transferred, in or into, or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her property in respect of which, so far as any liability may be incident thereto, she shall alone be liable:

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

As to stock, etc., standing in the joint names of a married woman and others

7. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such annuity or deposit, or any sum forming part of the public stock or funds of Great Britain or the Islands, of any other stocks or funds transferable as aforesaid or any debentures, issued under any law of the Islands, or any share, stock, debenture, debenture stock or other benefit, right, claim or other interest, of or in any such corporation, company, public body or society, which is now or shall, at any time hereafter, be standing in the sole name of any married woman, or in the joint names of such married woman and any other person or persons not being her husband.

Fraudulent investments with money of husband

8. If any investment in any such deposit or annuity, or in any of the public stocks or funds of Great Britain or the Islands, or in any other stocks or funds transferable, or in any debenture issued under any law of the Islands, or in any share, stock, debenture or debenture stock, of any corporation, company or public body, municipal, commercial or otherwise, or in any share, debenture, benefit, right or claim, whatsoever in, to or upon the funds of any industrial, provident, friendly, building or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent, the Court may, upon an application under section 13, order such investment, and the dividends thereof, or any part thereof to be transferred and paid respectively to the husband, and nothing in this Law shall give validity, as against creditors of the husband, to any gift by a husband to his wife of any property which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors, but any moneys so deposited or invested may be followed as if this Law had not passed.

Moneys payable under policy of assurance not to form part of the estate of the insured

9. (1) A married woman may effect a policy upon her own life or the life of her husband for her own benefit; and the 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, his children or 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, her children or her husband and children, or any of them, shall create a trust in favour of the objects therein named; and the moneys payable under any such policy shall not, as long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts:



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

- (3) The insured 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 under any such policy.
- (4) In default of any such appointment of a trustee such policy, immediately on its being effected, shall vest in the insured, and his or her legal personal representatives, in trust for the purposes aforesaid.
- (5) If, at the time of the death of the insured or at any time afterwards, there shall be no trustee or it shall be 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 Grand Court. The receipt of a trustee or trustees duly appointed, or, in default of notice to the insurance office, the receipt of the legal personal representative of the insured, 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 her property

10. (1) Every woman, shall have in her own name, against all persons, 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, as if she were a *feme sole*, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort.
- (2) In any indictment or other proceedings under subsection (1) it shall be sufficient to allege such property to be her property; and in any proceedings under this section a husband or wife shall be competent to give evidence against each other, any statute 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 Law while they are living together as to or concerning any property claimed by her, nor 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 such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.

Wife's ante-nuptial debts and liabilities

- 11.** A woman after her marriage shall continue to be liable for all debts contracted, and all contracts entered into or wrongs committed by her before her 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 any laws relating to joint stock companies, and she may be sued for any such debt, and for any liability in damages or otherwise under any such contract, or in respect of any such wrong.

Acts of wife liable to criminal proceedings

- 12.** (1) A wife doing any act with respect to any property of her husband which if done by the husband with respect to property of the wife would make the husband liable to criminal proceedings by the wife under this Law shall, in like manner, be liable to criminal proceedings by her husband.
- (2) In any criminal proceeding against a husband or wife authorised by this Law, the husband and wife shall be competent and admissible witnesses, and, except when defendant, compellable to give evidence.

Questions between husband and wife as to property to be decided in summary way

- 13.** In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body or society, as aforesaid in whose books any stocks, funds or shares of either party are standing, may apply by summons or otherwise in a summary way to a Judge of the Grand Court or, at the option of the applicant irrespective of the value of the property in dispute, to the Magistrate; and a Judge of the Grand Court or Magistrate, as the case may be, may make such 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 such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit:

Provided always that any order of a Judge 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, or on an equitable proceeding in the said Court, would be; and any order of the Magistrate under this section shall be subject to appeal in the same way as any other order made by the Magistrate would be:

Provided also that the Judge or the Magistrate, if either party so require, may hear any such application in Chambers:

Provided also that any such bank, corporation, company, public body or society shall, in the matter of any such application, for the purposes of costs or otherwise be treated as a stakeholder only.



Married woman as an executrix or trustee

- 14.** 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 such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds of Great Britain or the Islands, or of any other stocks or funds transferable as aforesaid, or any debentures issued under any law of the Islands or any share, stock, debenture, debenture stock or other benefit, right, claim or other interest, of or in any such corporation, company, public body or society, in that character, without her husband, as if she were a *feme sole*.

Saving of existing settlements and the power to make future settlements

- 15.** Nothing in this Law shall interfere with or affect any settlement or agreement for a 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 to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property, to be made or entered into by herself, shall have any validity against debts contracted by her before marriage; and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

Cost may be ordered to be paid out of property subject to restraint on anticipation

- 16.** In any action or proceeding instituted by a woman or a next friend on her behalf, the Court, before which such action or proceeding is pending, shall have jurisdiction by judgment or order, from time to time, to order payment of the costs of the opposite party out of property which is subject to a restraint on anticipation, and may enforce such payment by the appointment of a receiver and the sale of the property or otherwise as may be just.

Will of married woman

- 17.** Section 19 of the *Wills Law (1997 Revision)*, which provides that a will shall take effect as if it were executed immediately before the death of the testator, shall apply to the will of a married woman whether she is or is not possessed of, or entitled to, any property at the time of making it, and such will shall not require to be re-executed or republished after the death of her husband.

Married woman to be liable for the maintenance of her children

- 18.** A married woman having property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren:

Provided always that nothing in this Law shall relieve her husband from any liability imposed upon him by law to maintain her children or grandchildren.

Legal representative of married woman

- 19.** For the purposes of this Law, the legal personal 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.

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September, 1997.**

Carmena H. Parsons
Clerk of Executive Council

