



The New Civil Code for Everyone

MARITAL AGREEMENT

The ordinary language uses the phrase *prenuptial agreement* (which however does not cover exactly the regulation of marital agreement).

- The New Civil Code provides three types of matrimonial property:
 1. regime of joint ownership of property,
 2. regime of separate ownership of property,
 3. regime of convention-based ownership of property
- The choice of a different legal regime than that of legal joint ownership (which was the only one admitted by law until the enforcement of the New Civil Code), is done by signing a *marital agreement*: practically the parties move from the regime of legal joint property to the regime of convention-based ownership of property or opt for the regime of separate ownership of property;
- The marital agreement is entered into by a deed authenticated by the notary public, with the agreement of all parties, expressed in person or by proxy with an authentic, special mandate of which the contents is established beforehand. The infringement of these provisions is sanctioned by the absolute nullity of the deed.
- It can be entered into: - before the marriage (and then it will be effective only after the date of marriage conclusion);
 - during the marriage (and then it will be effective from the date established by the parties or, by default, from the date of its signing);

The Object of Marital Agreement

- *the object of marital agreement is represented by the matrimonial regime chosen by the spouses as an alternative to the legal matrimonial regime*
- The marital agreement is subject to the legal provisions concerning the chosen matrimonial regime, with the exception of special cases provided by law; otherwise the convention becomes of absolute nullity;
- By matrimonial convention one cannot infringe the imperative rules common to all matrimonial regimes
- It cannot be detrimental to the equality between spouses, parental authority or the transmission of legal inheritance.

The Praecipuum Clause (the right to take one or more common assets before the partition by court)

- It is possible to establish by marital agreement that the surviving spouse take over without payment, before partition of the succession, one or more of the common assets, jointly owned (right of shared property on an undivided asset) or in joint ownership;
- may be stipulated to the benefit of each of the spouses or only in favor of one of them;
- It is not subject to the summary of donations (a duty of the descendants and of the surviving spouse to include in the estate also the goods received as a donation from the deceased) but only to the reduction of the liberalities (limitation by judicial decision of the decision of a deceased person to donate his/her assets if this is detrimental to the statutory portion of certain heirs);
- The praecipuum clause is in no way detrimental to the right of common creditors to prosecute, even before the cessation of the marital agreement, the assets which represent

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the object of the clause;

- becomes inapplicable when the community ceases during the life of the spouses, when the beneficiary spouse dies before the ordering spouse or when these dies at the same time or when the assets which represented its object were sold on request of common creditors;
- the enforcement of the praecipuum clause is done in kind or, if this is not possible, by equivalent.

Publicity of the Marital Agreement

- in order to be opposable to third parties, marital agreements are inscribed in the National Notary Register of matrimonial regimes;
- after the authentication of the marital agreement during matrimony or after receiving the copy of the marriage act (from the Registrar), the notary public sends, *ex officio*, a copy of the agreement to:
 - o *the civil status service where the matrimony was celebrated*, in order to inscribe a mention of it on the marriage act;
 - o *the National Notary Register of Matrimonial Regimes*;
 - o *the other Publicity Registers* - taking into account the nature of the assets, the marital agreements will be noted in the Land Register, they will be recorded in the Register of Commerce, as well as in other Publicity Registers as provided by law de (in all these cases, the non-accomplishment of the special publicity formalities cannot be replaced by the record made in the National Notary Register of Matrimonial Regimes);
- these provisions do not exclude the right of any of the spouses to request the enforcement of the publicity formalities;
- any person may search the National Notary Register of Matrimonial Regimes and may request, according to the law, the release of certified extracts, *without having to justify any interest*;
- the marital agreement cannot be opposed to third parties with regard to the deeds signed by them with one of the spouses unless the mentioned publicity formalities have been accomplished or if the third parties had become aware of it by other means. This means that if there is a secret document regarding the matrimonial regime, then it is only effective between spouses and cannot be opposed to third parties unless one can prove that the third party was aware of the contents of this document for which the publicity formalities were not fulfilled.
- the marital agreement cannot be opposed to third parties with regard to the deeds signed by them with any of the spouses *before* the celebration of the marriage.

Modification of marital agreement

- the marital agreement may be modified before the celebration of the marriage, under the same terms as required for its conclusion.
- the provisions regarding publicity and respectively the non-opposability of the marital agreement apply.

Conclusion of the marital agreement by a minor

- the minor who has turned 16 and may marry for justified reasons, with medical approval and consent of the legal guardian, may conclude or modify a marital agreement *only with the consent of his/her legal guardian and with the authorization of the guardianship court*;
- in case of default of consent or authorization, the agreement concluded by the minor may be annulled pursuant to the law;
- the action for annulment cannot be initiated if one year has passed since the conclusion of the matrimony.

The nullity of the marital agreement

- in case the marital agreement is null or annulled, the regime of legal joint ownership applies between the spouses, without affecting the rights received from bona fide third parties.

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