

CAYMAN ISLANDS



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**A BILL FOR A LAW TO A LAW TO PROVIDE FOR THE DIVISION OF  
FAMILY PROPERTY AND TO PROVIDE FOR INCIDENTAL AND  
CONNECTED PURPOSES**

**THE FAMILY PROPERTY (RIGHTS OF SPOUSES) BILL, 2018**

**MEMORANDUM OF OBJECTS AND REASONS**

This Bill is one of three pieces of legislation recommended by the Law Reform Commission in its family law review. The Bill, among other things, seeks to modernize the principles upon which matrimonial or family property is divided upon the breakdown of a marriage or union. It deals with property rights of both married and certain unmarried spouses in the same way.

The Bill also seeks to regulate property rights of persons in common law unions, similar to countries such as Jamaica, Australia and New Zealand.

**PART 1 - PRELIMINARY**

Clause 1 of the Bill provides the short title and the commencement.

Clause 2 provides the interpretation provisions. Of note in clause 2 are definitions for “family home” and “spouse”. “Family home” is defined as the dwelling-house that is owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence together with any land, buildings or improvements appurtenant to such dwelling-house and used wholly or mainly for the purposes of the household.

In accordance with clause 2, “spouse” means -

- (a) a man who is married to a woman and vice versa; or
- (b) an unmarried man or unmarried woman who is in a de facto relationship with a person of the opposite sex for a period of not less than five years immediately preceding the institution of proceedings under this Law or the termination of cohabitation.

Clause 3 provides a definition for “de facto relationship”. It is provided that a person is in a de facto relationship with another person if -

- (a) the persons are not legally married to each other;
- (b) the persons are not related by family; and
- (c) having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.

The circumstances referred to above may include any or all of the following -

- (a) the duration of the relationship;
- (b) the nature and extent of their common residence;
- (c) whether a sexual relationship exists;

- (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;
- (e) the ownership, use and acquisition of their property;
- (f) the degree of mutual commitment to a shared life;
- (g) the care and support of children; and
- (h) the reputation and public aspects of the relationship.

Clause 4 of the Bill deals with the application of the Law and provides that except as otherwise provided in this legislation and subject to subclauses (2) and (3) of clause 4 and section 7, the provisions of this legislation shall not apply after the death of either spouse and every enactment and rule of law or of equity shall continue to operate and apply in such case as if this Law had not been enacted.

Subclause (2) of clause 4 provides that the death of either spouse shall not affect the validity or effect of anything done or suffered in pursuance of the provisions of this legislation. Subclause (3) provides that if, while any proceedings under this legislation are pending one of the spouses dies, the proceedings may be continued and be completed; and any appeal may be heard and determined and the court may make such order as it thinks fit in the circumstances of the case as if the spouse had not died.

Clause 5 provides that except as otherwise expressly provided in this legislation, the provisions of this legislation shall have effect in place of the rules and presumptions of the common law and of equity to the extent that they apply to transactions between husband and wife in respect of property and, in cases for which provision is made by this legislation, between husband and wife, and each of them, and third parties.

Clause 6 deals with the jurisdiction of the courts under this legislation. It is provided that subject to clause 11, in any proceedings relating to family property instituted under this legislation, the parties to the proceedings may apply -

- (a) where the value of the property is fifty thousand dollars or less, to the summary court; or
- (b) in any other case, to the Grand Court.

## **PART 2 – FAMILY HOME**

Clause 7 of the Bill deals with the entitlement to the family home -

- (a) on the grant of a decree of dissolution of a marriage or the termination of cohabitation;
- (b) on the grant of a decree of nullity of marriage; and
- (c) on the grant of a decree of judicial separation.

In such cases each spouse is, subject to clause 8 and 10 of the legislation, entitled to one-half share of the family home. Thus, the entitlement is not an absolute one and the court will have the power to vary such entitlement.

In accordance with clause 8 where in the circumstances of any particular case the court is of the opinion that it would be unreasonable or unjust for each spouse to be entitled to one-half of the family home, the court may, upon application by one of the spouses, make such order as it thinks reasonable taking into consideration such factors as the court thinks relevant including the following -

- (a) that the family home was inherited by one spouse;
- (b) that the family home was a gift to one spouse and the donor intended that spouse alone to benefit;
- (c) that the family home was already owned by one spouse at the time of the marriage or the beginning of cohabitation; and
- (d) that the marriage or the cohabitation is of short duration.

Clause 9 of the Bill deals with transactions to defeat claims to a family home. It is provided that where the title to a family home is in the name of one spouse only then, subject to the provisions of the legislation -

- (a) the other spouse may take such steps as may be necessary to protect his or her interest including the lodging of a caution pursuant to section 127 of the Registered Land Law (2004 Revision); and
- (b) any transaction concerning such home shall require the consent of both spouses.

The court may dispense with the consent of a spouse required by subclause (1)(b) if it is satisfied that consent cannot be obtained because the spouse is mentally incapacitated, the whereabouts of the spouse are unknown, consent is unreasonably withheld or for any other reason consent should be dispensed with.

In accordance with subclause (3), where one spouse enters into a transaction concerning the family home without the consent of the other spouse, then -

- (a) subject to paragraph (b), that transaction may be set aside by the court on an application by the other spouse if such consent had not been previously dispensed with by the court; and
- (b) paragraph (a) shall not apply in any case where an interest in the family home is acquired by a person as bona fide purchaser for value without notice of the other spouse's interest in the family home.

Where, by virtue of subclause (3)(b), a transaction cannot be set aside by the court, the spouse whose interest is defeated shall be entitled to claim, out of the proceeds of the transaction, the value of that spouse's share in the family home.

### **PART 3 – DIVISION OF PROPERTY**

Clause 10 deals with pre-nuptial agreements which fall under two categories, marriage agreement and cohabitation agreements. The type of agreement depends on the nature of the relationship of the spouse i.e. whether married or about to marry or in a de facto relationship. Clause 10 provides that a marriage or cohabitation agreement may define the share of the property or any part thereof to which each spouse shall be entitled upon separation or dissolution of marriage and provides for the calculation of such share and the method by which property or part thereof may be divided. Every such agreement must be in writing signed by both parties whose signatures must be signed either by a justice of the peace, notary public or an attorney-at-law.

It is further proposed that an agreement under clause 10 will be unenforceable in any case where there is non-compliance with the formalities or the court is satisfied that it would be unjust to give effect to the agreement. An agreement made by a minor and every instrument executed by such minor for the purpose of giving effect to any such agreement shall be valid and effective as if the minor were of full age.

Under the draft legislation the court will have jurisdiction to enquire into any agreement made and may, in any proceedings under the legislation or on an application made for the purpose, declare that the agreement shall have effect in whole or in part or for any particular purpose if it is satisfied that the non-compliance mentioned in that subsection has not materially prejudiced the interests of a party to the marriage agreement. In deciding whether it would be unjust to give effect to an agreement under clause 10, the court must have regard to -

- (a) the provisions of the agreement;
- (b) the time that has elapsed since the agreement was made;
- (c) whether, in light of the circumstances existing at the time the agreement was made, the agreement is unfair or unreasonable;
- (d) whether any changes in circumstances since the agreement was made (whether or not such changes were contemplated by the parties) render the agreement unfair or unreasonable; or
- (e) any other matter which it considers relevant to any proceedings.

Any property to which an agreement does not apply will be subject to the other provisions of the legislation relating to the determination of financial matters by the court. It is proposed that parties to an agreement or an amendment of such

agreement may register such agreement or amendment thereto with the Clerk of the Court.

Under the Bill the court may also declare interests in property during the subsistence of a marriage or union. Clause 11 provides that where during the subsistence of a marriage or cohabitation, any question arises between the spouses as to the title to or possession of property, either party or any bank, corporation, company, public body or society in which either of the spouses has any stocks, funds or shares may apply by summons or otherwise in a summary way to the Grand Court or, at the option of the applicant irrespective of the value of the property in dispute, to the summary court for a determination of such question.

Clause 12 sets out how property to which an application relates should be evaluated. Subject to the contrary in a marriage or cohabitation agreement and the rights of creditors, the value of property to which an application under the legislation relates shall be its value at the date of the hearing of the matter unless the court otherwise decides. A spouse's share in property shall be determined as at the date on which the spouses ceased to live together as man and wife or to cohabit or if they have not so ceased, at the date of the application to the court.

Clause 13 sets out when an application may be made to the court for a division of property. Such times include on the application for a grant of a dissolution of marriage or termination of cohabitation or where one spouse is endangering the property or seriously diminishing its value, by gross mismanagement or by wilful or reckless dissipation of property or earnings.

The Bill in clause 14 sets out the matters which must be considered by the court when considering an application for division of property. Such matters include the following -

- (a) the contribution made directly or indirectly to the acquisition, conservation or improvement of the property by either spouse, including any contribution made in the capacity of homemaker or parent;
- (b) that there is no family home;
- (c) the age of each spouse and the duration of the marriage or the period of cohabitation;
- (d) that there is an agreement with respect to the ownership and division of property;
- (e) the contributions which each of the spouses has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution made in the capacity of homemaker or parent;

- (f) the effect of any proposed order upon the earning capacity of either spouse;
- (g) the standard of living enjoyed by the family before the breakdown of the marriage or the relationship;
- (h) any order that has been made under the legislation in respect of a spouse; or
- (i) such other fact or circumstance which, in the opinion of the court the justice of the case requires to be taken into account.

A contribution is not only a monetary one and clause 14 of the Bill affirms the fact that there shall be no presumption that a monetary contribution is of greater value than a non-monetary contribution. Such contribution may include-

- (a) the care of any relevant child or any aged or infirm relative or dependant of a spouse;
- (b) the giving of assistance or support by one spouse to the other, whether or not of a material kind, including the giving of assistance or support which -
  - (i) enables the other spouse to acquire qualifications; or
  - (ii) aids the other spouse in the carrying on of that spouse's occupation or business;
- (c) the management of the household and the performance of household duties;
- (d) the payment of money to maintain or increase the value of the property or any part thereof;
- (e) the performance of work or services in respect of the property or part thereof; or
- (f) the provision of money, including the earning of income for the purposes of the marriage or cohabitation.

Under clause 15 the court is empowered to alter the interest of either spouse in property and may, for example, make an order requiring either or both spouses to make, for the benefit of either or both spouses, such settlement or transfer of property as the court determines.

Under clause 16 the court is empowered to set aside an order made under clause 15 if, for example, evidence is provided that the order was obtained by fraud, duress or false evidence.

The Bill seeks to provide protection to creditors and third parties and, in accordance with clause 17, it is provided that secured and unsecured creditors of a spouse shall have the same rights against that spouse as if the legislation had not been enacted. Further, property which, if the legislation were not enacted would have been administered under the Bankruptcy Law (1997 Revision) by the Trustee in Bankruptcy on the bankruptcy of a spouse, shall be so administered.

Each spouse will have a protected interest in respect of one-half share of the family home but on the bankruptcy of a spouse the Trustee in Bankruptcy shall pay to the other spouse such amount in satisfaction of the protected interest of that spouse as the court, on application of the Trustee in Bankruptcy, or that spouse, may direct. The value of property that may be divided between the spouses shall be ascertained by deducting from the value of property owned by each spouse -

- (a) any secured or unsecured debts (other than personal debts or debts secured wholly by property) owed by one spouse; and
- (b) the unsecured personal debts owed by one spouse to the extent that such debts exceed the value of any property of that spouse.

It is further provided under clause 18 that, subject to the legislation, the rights conferred on any spouse by an order made under the legislation shall be subject to the rights of any person entitled to the benefit of any security, charge or encumbrance affecting any property in respect of which the order is made if such security, charge or encumbrance was registered before the order was made or if the rights of that person arose under an instrument executed before the date of the making of the order. However, no money payable under any security, charge or encumbrance shall be called in or become due by reason of the making of an order under the legislation, not being an order directing the sale of any property.

Clause 19 makes void any transaction, etc. between spouses with respect to their family home or other property which is intended to defeat any creditor of either spouse.

Clause 20 makes it an offence for any person, without the leave of the court, to sell or otherwise dispose of property the subject of proceedings under the legislation.

Clause 21 provides that where the court is satisfied that a person is about to dispose of property, whether for value or not, by or on behalf of or by direction of or in the interest of any person in order to defeat the claim or rights of any other person under this Law, then, on the application of that other person and on such notice being given as the court may direct, the court may -

- (a) by order restrain the making of the disposition; or
- (b) order that any proceeds, which, at the time of the hearing of the application may have been paid in respect of the disposition, be paid into Court to be dealt with as the court directs.

Clause 22 provides that, in respect of property to which clause 21 relates, the court may, among other things, on application by a relevant person, order the transfer of that property to another person.

**PART 4 – POWER OF COURT TO MAKE OTHER ORDERS**

Clause 23 provides a list of the types of orders which the court is empowered to make under the legislation.

**PART 5- GENERAL**

Clause 24 repeals section 13 of the Married Women's Property Law (1997 Revision). Section 13 of that Law provides that questions relating to property division between husband and wife are to be determined by the summary court.

Clause 25 contains transitional provisions.

**THE FAMILY PROPERTY (RIGHTS OF SPOUSES) BILL, 2018**

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CAYMAN ISLANDS

**A BILL FOR A LAW TO A LAW TO PROVIDE FOR THE DIVISION OF  
FAMILY PROPERTY AND TO PROVIDE FOR INCIDENTAL AND  
CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

**PART 1 – PRELIMINARY**

1. This Law may be cited as the Family Property (Rights of Spouses) Law, 2018. Short title and commencement

2. In this Law- Interpretation

“cohabit” means to live together in a conjugal relationship outside of marriage and “cohabitation” shall be construed accordingly;

“cohabitation agreement” means an agreement under section 10 to which spouses of a de facto relationship may agree;

“de facto relationship” has the meaning assigned by section 3;

“family home” means the dwelling-house that is owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence together with any land, buildings or improvements appurtenant to such dwelling-house and used wholly or mainly for the purposes of the household;

“marriage” includes a void marriage;

“marriage agreement” means an agreement under section 10 to which spouses of a marriage or two persons who are contemplating marriage may agree;

“property” means any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose in action, or any other right or interest whether in possession or not to which the spouses or either of them is entitled;

“relevant child” means a child who is -

- (a) a child of both spouses; or
- (b) a child of one spouse who is accepted as one of the family by the other spouse, and, in paragraph (a) and this paragraph, the definition “child” includes an adopted child and a child of a void marriage;

“spouse” means -

- (a) a man who is married to one woman and vice versa; and
- (b) a single man or single woman who is in a de facto relationship with a person of the opposite sex for a period of not less than five years immediately preceding the institution of proceedings under this Law or the termination of cohabitation, as the case may be; and

“void marriage” has the meaning assigned by the Matrimonial Causes Law, 2018.

Meaning of de facto relationship

- 3. (1) A person is in a de facto relationship with another person if -
  - (a) the persons are not legally married to each other;
  - (b) the persons are not related by family in accordance with subsection (4); and
  - (c) having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.
- (2) The circumstances referred to in subsection (1) may include any or all of the following -
  - (a) the duration of the relationship;
  - (b) the nature and extent of their common residence;
  - (c) whether a sexual relationship exists;
  - (d) the degree of financial dependence or interdependence;
  - (e) any arrangements for financial support, between them;
  - (f) the ownership, use and acquisition of their property;
  - (g) the degree of mutual commitment to a shared life;

- (h) the care and support of children; and
- (i) the reputation and public aspects of the relationship.

(3) A court determining whether a de facto relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.

(4) For the purposes of subsection (1), two persons are related by family if

- (a) one is the child (including an adopted child) of the other;
- (b) one is another descendant of the other (even if the relationship between them is traced through an adoptive parent); or
- (c) they have a parent in common (who may be an adoptive parent of either or both of them).

4. (1) Except as otherwise provided in this Law and subject to subsections (2) and (3) and section 7, the provisions of this Law shall not apply after the death of either spouse and every enactment and rule of law or of equity shall continue to operate and apply in such case as if this Law had not been enacted. Application of Law

(2) The death of either spouse shall not affect the validity or effect of anything done or suffered in pursuance of the provisions of this Law.

(3) If, while any proceedings under this Law are pending one of the spouses dies, the proceedings may be continued and be completed; and any appeal may be heard and determined and the court may make such order as it thinks fit in the circumstances of the case as if the spouse had not died.

5. Except as otherwise expressly provided in this Law, the provisions of this Law shall have effect in place of the rules and presumptions of the common law and of equity to the extent that they apply to transactions between spouses in respect of property and, in cases for which provision is made by this Law, between spouses, and each of them, and third parties. Law to have effect in place of rules of common law and equity

6. (1) Subject to section 11, in any proceedings relating to property instituted under this Law, the parties to the proceedings may apply - Courts having jurisdiction

- (a) where the value of the property is fifty thousand dollars or less, to the summary court; or
- (b) in any other case, to the Grand Court.

(2) The judge of the Grand Court or the summary court may, upon the request of either party to proceedings upon an application referred to in subsection (1), hear such application in chambers.

**PART 2 – FAMILY HOME**

Entitlement to family home

7. Subject to sections 8 and 10, each spouse shall be entitled to one-half share of the family home -

- (a) on the grant of a decree of dissolution of a marriage or the termination of cohabitation;
- (b) on the grant of a decree of nullity of marriage; and
- (c) on the grant of a decree of judicial separation.

Power of court to vary equal share rule

8. Where in the circumstances of any particular case the court is of the opinion that it would be unreasonable or unjust for each spouse to be entitled to one-half of the family home, the court may, upon application by one of the spouses, make such order as it thinks reasonable taking into consideration such factors as the court thinks relevant including the following -

- (a) that the family home was inherited by one spouse;
- (b) that the family home was a gift to one spouse and the donor intended that that spouse alone would benefit;
- (c) that the family home was already owned by one spouse at the time of the marriage or the beginning of cohabitation; and
- (d) that the marriage or the cohabitation is of short duration.

Transactions to defeat interest in family home

9. (1) Where the title to a family home is in the name of one spouse only then, subject to the provisions of this Law -

- (a) the other spouse may take such steps as may be necessary to protect his or her interest including the lodging of a caution pursuant to section 127 of the Registered Land Law (2004 Revision); and
- (b) any transaction concerning such home shall require the consent of both spouses.

(2004 Revision)

(2) The court may dispense with the consent of a spouse required by subsection (1)(b) if it is satisfied that consent cannot be obtained because the spouse is mentally incapacitated, the whereabouts of the spouse are unknown, consent is unreasonably withheld or for any other reason consent should be dispensed with.

(3) Where one spouse enters into a transaction concerning the family home without the consent of the other spouse then -

- (a) subject to paragraph (b), that transaction may be set aside by the court on an application by the other spouse if such consent had not been previously dispensed with by the court; and
- (b) paragraph (a) shall not apply in any case where an interest in the family home is acquired by a person as bona fide purchaser for

value without notice of the other spouse's interest in the family home.

(4) Where by virtue of subsection (3)(b) a transaction cannot be set aside by the court, the spouse whose interest is defeated shall be entitled to claim, out of the proceeds of the transaction, the value of that spouse's share in the family home.

### **PART 3 – DIVISION OF PROPERTY**

10. (1) Subject to section 19 -

Agreements in respect of property

- (a) spouses or two unmarried persons, in contemplation of their marriage to each other or of cohabiting, may, for the purpose of contracting out of the provisions of this Law, make such agreement with respect to the ownership and division of their property (including future property) as they think fit; and
- (b) spouses may, for the purpose of settling any differences that have arisen between them concerning property owned by either or both of them, make such agreement with respect to the ownership and division of that property as they think fit,

and such agreements may be either cohabitation agreements or marriage agreements as defined in accordance with this Law.

(2) Without prejudice to the generality of subsection (1), an agreement may -

- (a) define the share of the property or any part thereof to which each spouse shall be entitled upon separation, dissolution of marriage or termination of cohabitation; and
- (b) provide for the calculation of such share and the method by which property or part thereof may be divided.

(3) Each party to an agreement under subsection (1) shall obtain independent legal advice before signing the agreement and the legal advisor shall certify that the implications of the agreement have been explained to the person obtaining the advice.

(4) Every agreement made pursuant to subsection (1) shall be in writing signed by both parties whose signatures shall -

- (a) if signed in the Islands, be witnessed by a justice of the peace or an attorney-at-law; or
- (b) if signed in a country other than the Islands, be witnessed by a notary public in that country.

(5) Subject to subsection (7), an agreement to which this section applies shall be unenforceable in any case where -

- (a) there is non-compliance with subsection (3) or (4); or
- (b) the court is satisfied that it would be unjust to give effect to the agreement.

(6) An agreement made pursuant to subsection (1) by a minor and every instrument executed by such minor for the purpose of giving effect to any such agreement shall be valid and effective as if the minor were of full age.

(7) Notwithstanding subsection (5)(a), the court shall have jurisdiction to enquire into any agreement made under subsection (1) and may, in any proceedings under this Law or on an application made for the purpose, declare that the agreement shall have effect in whole or in part or for any particular purpose if it is satisfied that the non-compliance mentioned in that subsection has not materially prejudiced the interests of a party to the agreement.

(8) In deciding under subsection (5)(b) whether it would be unjust to give effect to an agreement, the court shall have regard to -

- (a) the provisions of the agreement;
- (b) the time that has elapsed since the agreement was made;
- (c) whether, in light of the circumstances existing at the time the agreement was made, the agreement is unfair or unreasonable;
- (d) whether any changes in circumstances since the agreement was made (whether or not such changes were contemplated by the parties) render the agreement unfair or unreasonable; and
- (e) any other matter which it considers relevant to any proceedings.

(9) Nothing in this section shall limit or affect the capacity of spouses to agree to acquire or hold any property jointly or in common (whether or not with any other person), and whether legally or beneficially.

(10) Any property to which an agreement under this section does not apply shall be subject to the other provisions of this Law.

(11) It is hereby declared that an agreement made pursuant to subsection (1) by persons who cohabit shall not be void as against public policy.

(12) In subsection (6), “minor” means a person who is sixteen years of age and over but below the age of eighteen years.

Court may make orders regarding property

11. (1) Where, during the subsistence of a marriage or cohabitation, any question arises between the spouses as to the title to or possession of property,

either party or any bank, corporation, company, public body or society in which either of the spouses has any stocks, funds or shares may apply by summons to the Grand Court or, at the option of the applicant irrespective of the value of the property in dispute, to the summary court for a determination as to who has such title or possession.

(2) The judge of the Grand Court or the magistrate may make such order with respect to the property in dispute under subsection (1) including an order for the sale of the property.

(3) A spouse may make an application to the court in respect of any title, interest or rights to property which had been in the possession or under the control of the other spouse but has ceased to be in the possession or under the control of that other spouse.

(4) The court may, on an application under subsection (3), make such order as it thinks just for the payment of a sum in respect of -

- (a) money to which the application relates or the spouse's share thereof; or
- (b) the value of property to which the application relates or the spouse's interest therein, if the court is satisfied that the property was in the possession of or under the control of the other spouse who has not made to the applicant, such payment or disposition in relation to the property as would have been appropriate in the circumstances.

(5) Where a court makes an order under subsection (2) or (4), it may make an order as to costs and may make such consequential orders including orders as to sale or partition and interim or permanent orders as to possession.

(6) An order made under subsection (2) or (4) -

- (a) by a judge of the Grand Court, shall be subject to appeal in the same manner as would be applicable to an order made by that judge in any proceedings in that Court; or
- (b) by a magistrate, shall be subject to appeal in the same manner as would be applicable to any other order made by that magistrate.

(7) In respect of an application under subsection (1), any bank, corporation, company, public body or society shall, for the purposes of that application (including costs referred to in subsection (5)) be treated as a stakeholder only.

Determination of value and share of property	<p>12. (1) Subject to sections 10 and 17(5), the value of property to which an application under this Law relates shall be its value at the date of the hearing of the matter unless the court otherwise decides.</p> <p>(2) A spouse's share in property shall, subject to section 9, be determined as at the date on which the spouses ceased to live together as man and wife or to cohabit or if they have not so ceased, at the date of the application to the court.</p> <p>(3) In determining the value of property the spouses shall agree as to the valuator who shall value the property, or if there is no agreement, each spouse shall appoint a valuator and in that case the value shall be determined by dividing the sum of the two valuations by two.</p>
Time when application may be made to court for division of property	<p>13. (1) A spouse shall be entitled to apply to the court for a division of property -</p> <ul style="list-style-type: none"><li>(a) on the application for a grant or upon the grant of a decree of dissolution of a marriage or termination of cohabitation;</li><li>(b) on the application for a grant of a decree of nullity of marriage;</li><li>(c) on the application for a grant of a decree of separation; or</li><li>(d) where one spouse is endangering the property or seriously diminishing its value, by gross mismanagement or by wilful or reckless dissipation of property or earnings.</li></ul> <p>(2) An application under subsection (1)(a), (b) or (c) may also be made within twelve months of the dissolution of a marriage, termination of cohabitation, annulment of marriage, or separation or such longer period as the court may allow after hearing the applicant.</p> <p>(3) For the purposes of subsection (1)(a), (b) and (c) and section 14 the definition of "spouse" shall include a former spouse.</p>
Division of property	<p>14. (1) Where under section 13 a spouse applies to the court for a division of property the court may -</p> <ul style="list-style-type: none"><li>(a) make an order for the division of the family home in accordance with section 7 or 8, as the case may require; or</li><li>(b) subject to section 17(5), divide such property, other than the family home, as it thinks fit, taking into account the factors specified in subsection (3).</li></ul> <p>(2) The court shall not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.</p>

(3) In considering what order should be made under this section, the court shall take into account the following -

- (a) the contribution made directly or indirectly to the acquisition, conservation or improvement of the property by either spouse, including any contribution made in the capacity of homemaker or parent;
- (b) that there is no family home;
- (c) the age of each spouse and the duration of the marriage or the period of cohabitation;
- (d) that there is an agreement with respect to the ownership and division of property;
- (e) the contributions which each of the spouses has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution made in the capacity of homemaker or parent;
- (f) the effect of any proposed order upon the earning capacity of either spouse;
- (g) the standard of living enjoyed by the family before the breakdown of the marriage or the relationship;
- (h) any order that has been made under this Law in respect of a spouse; or
- (i) such other fact or circumstance which, in the opinion of the court the justice of the case requires to be taken into account.

(4) In subsection (3)(a), “contribution” means-

- (a) the acquisition or creation of property including the payment of money for that purpose;
- (b) the care of any relevant child or any aged or infirm relative or dependant of a spouse;
- (c) the giving up of a higher standard of living than would otherwise have been available;
- (d) the giving of assistance or support by one spouse to the other, whether or not of a material kind, including the giving of assistance or support which-
  - (i) enables the other spouse to acquire qualifications; or
  - (ii) aids the other spouse in the carrying on of that spouse’s occupation or business;
- (e) the management of the household and the performance of household duties;
- (f) the payment of money to maintain or increase the value of the property or any part thereof;
- (g) the performance of work or services in respect of the property or part thereof;

- (h) the provision of money, including the earning of income for the purposes of the marriage or cohabitation; and
- (i) the effect of any proposed order upon the earning capacity of either spouse.

(5) For the avoidance of doubt, there shall be no presumption that a monetary contribution is of greater value than a non-monetary contribution.

Alteration of property interest

15. (1) In any proceedings in respect of the property of either spouse (other than the family home), the court may make such order as it thinks fit altering the interest of either spouse in the property including -

- (a) an order for a settlement of property in substitution for any interest in the property; and
- (b) an order requiring either or both spouses to make, for the benefit of either or both spouses, such settlement or transfer of property as the court determines.

(2) The court shall not make an order under subsection (1) unless it is satisfied that it is just and equitable to do so.

(3) Where the court makes an order under subsection (1), the court shall have regard to -

- (a) the effect of the proposed order upon the earning capacity of either spouse;
- (b) the matters referred to in section 14(3) in so far as they are relevant; and
- (c) any other order that has been made under this Law in respect of a spouse.

Court may set aside order made under section 15

16. (1) Where the court is satisfied on an application made by a person affected by an order made under section 15 that the order was obtained by fraud, duress, the giving of false evidence or the suppression of evidence, the court may set aside the order and make another order under subsection (1) of that section in substitution therefore.

(2) The court shall, in exercising its power under subsection (1), have regard to the protection of the interest of a bona fide purchaser for value without notice.

Provisions relating to creditors

17. (1) Subject to the provisions of this Law -

- (a) secured or unsecured creditors of a spouse shall have the same rights against that spouse and a property owned by that spouse as if this Law has not been enacted; and

- (b) property which, if this Law were not enacted would have been administered under the Bankruptcy Law (1997 Revision) by the Trustee in Bankruptcy on the bankruptcy of a spouse, shall be so administered.

(1997 Revision)

(2) Each spouse shall have a protected interest in respect of one-half share of the family home.

(3) Where, on the bankruptcy of a spouse, the family home or the proceeds of sale therefrom form part of the property to be administered by the Trustee in Bankruptcy, the Trustee in Bankruptcy shall, after paying any debt secured on the family home, pay to the other spouse an amount equivalent to that spouse's protected interest or so much of it as remains after paying those debts.

(4) Notwithstanding subsection (2), on the bankruptcy of a spouse, the Trustee in Bankruptcy shall pay to the other spouse such amount in satisfaction of the protected interest of that spouse as the court, on application of the Trustee in Bankruptcy, or that spouse, may direct.

(5) The value of property that may be divided between the spouses shall be ascertained by deducting from the value of property owned by each spouse -

- (a) any secured or unsecured debts (other than personal debts or debts secured wholly by property) owed by one spouse; and
- (b) the unsecured personal debts owed by one spouse to the extent that such debts exceed the value of any property of that spouse.

(6) Where any secured or unsecured personal debt of one spouse is paid out of property owned by both spouses the court may, on a division of that property, order that -

- (a) the share of the other spouse in that property be increased proportionately; or
- (b) the first mentioned spouse pay compensation to the other spouse.

(7) In this section "personal debt" means a debt incurred by either spouse other than a debt incurred -

- (a) by both spouses jointly;
- (b) in the course of a joint venture carried on by both spouses whether or not with any other person;
- (c) for the purpose of effecting improvements to the family home or acquiring, repairing or effecting improvements to the family chattels; or

- (d) for the benefit of both spouses or any relevant child in the course of managing the affairs of the household or for caring for the relevant child, as the case may be.

Protection of charge, etc. 18. (1) Subject to the provisions of sections 21 and 22, the rights conferred on any spouse by an order made under this Law shall be subject to the rights of any person entitled to the benefit of any security, charge or encumbrance affecting any property in respect of which the order is made if such security, charge or encumbrance was registered before the order was made or if the rights of that person arose under an instrument executed before the date of the making of the order.

(2) Notwithstanding anything contained in any enactment, no money payable under any security, charge or encumbrance referred to in subsection (1) shall be called in or become due by reason of the making of an order under this Law, not being an order directing the sale of any property.

Agreement to defeat creditors void 19. Any agreement, disposition or other transaction between spouses with respect to their family home or other property which is intended to defeat any creditor of either spouse shall be void.

Disposal of property 20. (1) No person shall, where proceedings are instituted pursuant to this Law, sell, charge or otherwise dispose of any property to which the proceedings relate without the leave of the court or the consent in writing of the spouse by whom the proceedings are brought.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars to imprisonment for a term of twelve months or to both such fine and imprisonment.

Court may restrain disposition of property 21. (1) Where the court is satisfied that a person is about to dispose of property whether for value or not, by or on behalf of or by direction of or in the interest of any person in order to defeat the claim or rights of any other person under this Law, then, on the application of that other person and on such notice being given as the court may direct, the court may act in accordance with subsection (2).

(2) The court may -

- (a) by order restrain the making of the disposition; or
- (b) order that any proceeds, which, at the time of the hearing of the application may have been paid in respect of the disposition, be paid into Court to be dealt with as the court directs.

(3) Any disposition of property to which subsection (1) refers which is made after an order has been made under subsection (2) shall be void however that the court may consider the claim of any person interested and make such order as it thinks fit.

22. (1) Where the court is satisfied that any disposition of property referred to in section 21(3) has been made in order to defeat the claim or rights of any other person, the court may, on the application of that other person order that -

Court may set aside disposition of property

- (a) the person to whom the disposition was made otherwise than as a bona fide purchaser for value without notice (hereinafter in this section referred to as the recipient) or his personal representative-
  - (i) shall transfer the property or any part thereof to such person as the court directs; or
  - (ii) shall pay into court, or to such person as the court directs, a sum not exceeding the difference between the value of the consideration (if any) and the value of the property; or
- (b) any person who, not being a bona fide purchaser for value without notice received any interest in the property from the recipient shall -
  - (i) transfer that interest to such person as the court directs; or
  - (ii) pay into court or to such person as the court directs, a sum not exceeding the value of the interest.

(2) The court may, for giving effect to any order under subsection (1), make such further order as it thinks fit.

#### **PART 4 – POWER OF COURT TO MAKE OTHER ORDERS**

23. (1) Without prejudice to any other provisions of this Law, the court may for the purposes of this Law, make any of the following orders -

Court may make other orders

- (a) for the sale of property or part thereof and for the division, vesting or settlement of the proceeds thereof;
- (b) for the vesting of property owned by both spouses as tenants in common in such share as the court considers just;
- (c) for the vesting of property or part thereof in either spouse;
- (d) for postponing the vesting of any share or part thereof in the property until such future date contingent on such future happening as may be specified in the order;
- (e) for the partition or vesting of any property;
- (f) for vesting property, owned by one spouse in both spouses jointly or as tenants in common in such share as the court considers just;
- (g) for vesting property owned by both spouses (whether jointly or as tenants in common) in one spouse;

- (h) for the cancellation of any settlement of a family home held in joint tenancy;
- (i) for the payment of a sum of money by one spouse to the other spouse;
- (j) for the transfer of land;
- (k) for the transfer of shares, stocks, mortgages, charges, debentures or other securities or of the title to any other property;
- (l) for the transfer of rights or obligations under any instrument or contract notwithstanding any term or condition contained in such instrument or contract; or
- (m) for varying the terms of any trust settlement, not being a trust under a will or other testamentary disposition.

(2) Where the court makes an order directing one spouse to pay to the other spouse a sum of money, the court may direct that payment be by a lump-sum payment or by instalments and either with or without security and otherwise in such manner and subject to such conditions as the court thinks fit.

(3) The court may make an order granting to either spouse for such period and on such terms and conditions as it thinks fit, the right to personally occupy the family home or any other premises forming part of the property belonging to either or both spouses.

(4) The person in whose favour an order is made under subsection (3) shall be entitled, to the exclusion of the other spouse, to personally occupy the family home or other premises to which the order relates.

(5) Notwithstanding section 4, an order made under subsection (3) shall be enforceable against the legal personal representative of the spouse against whom it is made unless the Court otherwise directs.

#### **PART 5 - GENERAL**

Repeal  
(1997 Revision)

24. (1) Subject to subsection (2), the Married Women's Property Law (1997 Revision) is repealed.

(2) The repeal of the Married Women's Property Law does not affect a woman's right in existence at the date of the commencement of this Law to acquire, hold and dispose of, any property nor her capacity -

- (a) to be liable in respect of any tort, contract, debt or obligation;
  - (b) to sue or and be sued, either in tort or in contract or otherwise;
- and

- (c) to 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*.

25. The commencement of this Law shall not affect -

Savings and transitional

- (a) any legal proceeding in respect of property which has been instituted under any enactment before such commencement; or
- (b) any remedy in respect of any such legal proceeding to enforce or establish a right, privilege, obligation or liability acquired, accrued or incurred before such commencement, and any such legal proceeding or remedy may be continued or

enforced as if this Law had not been brought into operation.

Passed by the Legislative Assembly this    day of            , 2018.

Speaker

Clerk of the Legislative Assembly