



GOING SEPARATE WAYS

Marilena Miltiadou, Senior Associate at Chrysostomides, explains the rights of ex-spouses to an estate, whether a prenuptial agreement is enforceable, how to protect your assets in a divorce procedure and other common problems arising during the dissolution of a marriage.

IN CYPRUS, LEGISLATION DOES NOT SPECIFICALLY REFER TO PRENUPTIAL AGREEMENTS AND, THEREFORE, DOES NOT OFFICIALLY RECOGNIZE OR GIVE ANY SPECIAL STATUS TO THEM

What rights to the estate does a former spouse have when he/she remarries? Property disputes between spouses are regulated by the Matrimonial Property Law of 1991, Law No. 232/91. When a marriage is dissolved or nullified or when the spouses separate and one spouse's property has increased during the course of the marriage, the other spouse may file an application to the Family Court and request part of the increase which resulted from their own contribution, considering that they can prove they contributed to the increase. In the case when one party can prove the increase but not the extent of their contribution, then their contribution is presumed to be

one third of the increase. This may be rebutted if the applicant can prove, on the balance of probabilities, that their contribution was more than one third (Article 14(2) of the Matrimonial Property Law). If, for example, the wife can prove on the balance of probabilities that it is her family who paid for the house and that the husband did not contribute to its acquisition/value increase, then she can rebut the one-third presumption and the other party may not have any claim to the house. Under Article 14 of the said Law, participation in the increase in property must be sought and the claim must be directed against the spouse or the ex-spouse, and not against third parties (the case of P. Gregoriou v D. Gregoriou (2001) 1 JSC 1461 is relevant). It is important to note that it is the increase of the property and not the property itself that is the subject of a matrimonial property application under the provision of Article 14. In other words, the court will compare

THE DISTRIBUTION OF ASSETS IS, IN MY OPINION, ONE OF THE MOST COMPLICATED ASPECTS OF FAMILY LAW IN CYPRUS

the property of the spouse at the time of the celebration of the marriage and at the time of the separation in order to determine the increase, if any. However, if there is no increase or the property of the spouse has decreased, then Article 14 does not apply and the other spouse cannot claim anything. If an ex-spouse remarries, they do not lose their right to the property they had with their spouse, as long as they can successfully prove during court proceedings that the preconditions briefly described above have been met. It is important to mention that "property" does not only refer to the property acquired during the marriage, but also to any property which a spouse acquired before the marriage "with the prospect of a marriage". For example, when the parties first cohabit and then get engaged.

Any claim in relation to property disputes between spouses must be brought within three years of the dissolution or nullification of the marriage and any claims cannot be inherited or assigned unless they have been contractually recognized or if a claim has already been served.

What rights to the estate do children from previous marriages have?

The Matrimonial Property Law only governs property disputes between spouses who are separated or ex-spouses and, as such, does not grant children any rights to matrimonial property upon a separation or divorce. Pursuant to the Wills and Succession Law, Cap.195, children are legal heirs of their parents and have rights only to property registered in their parents' names. Nor do they inherit any rights to issue a claim pursuant to the Matrimonial Property Law, unless such a right has been expressly recognised by contract or a claim has already been served.

Is a prenuptial agreement legally enforceable in Cyprus? If not, are there any exceptions?

In Cyprus, legislation does not specifically refer to prenuptial agreements and, therefore, does not officially recognize or give any special status to them. However, if such an agreement is made with the free consent of the parties – who are competent to contract for a lawful consideration and with a lawful object – and is otherwise not void, it will be valid and binding just like any other contract, under the Cyprus Contract Law Cap. 149. That said, the parties must have had the intention to create legal relations, which is more difficult to prove, because in domestic agreements of this type the presumption is that there is no such intention.

It will all depend on the facts and circumstances of the particular case, the testimonies of the witnesses who may testify before the Court in a potential claim, as well as on the wording of the agreement. In particular, the parties cannot present evidence of their own subjective intentions, given that the general rule is that the intention of the parties is to be judged objectively. Assuming that the parties have signed a legally binding agreement, their rights shall be deemed protected by a formal document, the breach of which will have legal consequences for the party in default, i.e. damages and/or specific performance. It may also be relied upon as proof that the other party/spouse duly and willingly agreed not to request any contribution to the property stated within the agreement.

How can you protect your assets in a divorce settlement?

Assets can be protected by means of an agreement to settle property disputes, pursuant to which any assets obtained before the marriage are the property of the party that acquired them. As such, they will fall outside of the pool of assets to be distributed among the parties. The parties may further decide on the distribution of property acquired jointly during the marriage. It is worth mentioning that if the parties settle their property disputes by written agreement, the distribution of the matrimonial assets no longer fall within the ambit of the Matrimonial Property Law and the Family Court but within the jurisdiction of the District Court. Otherwise, movable and immovable property obtained by either spouse before the marriage and with the prospect of marriage, or any time after the marriage was formed, is divided in accordance with the Matrimonial Property Law. Parties normally resort to court with an application for an order to that effect.

What other common problems arise in estate planning in divorce cases?

The distribution of assets is, in my opinion, one of the most complicated aspects of family law in Cyprus. Some of the problems that we commonly encounter in such cases include the difficulty of one spouse compensating the other for their contribution to the matrimonial home when cohabitation is no longer an option, when one of the two spouses refuses to leave the matrimonial home which is registered in the name of the other spouse, where there is no evidence proving the contribution of one spouse in the creation of the property and when there are outstanding loans during the settlement of property disputes.

CASE STUDY

X (husband) and Y (wife) started their cohabitation in January 1998, got engaged in April of the same year and got married in July 2000. In October 2010, they moved into their matrimonial home. They separated in May 2011 and their marriage was dissolved in 2013. The matrimonial home, which is registered in Y's name, was reconstructed by X's own personal efforts and by entering into several loans. Some of the loans were joint with Y. X repaid most of the loans. The plot of land on which the house in dispute was built was purchased in August 1998; half was purchased by Y's father and the remaining half was purchased by the parties, but the plot of land was registered in Y's name. The purchase price of the whole plot of land was initially paid by Y's father, but the parties subsequently took out a loan and the amount of the loan was paid to Y's father. Y refused to pay X any amount of money for his contribution in reconstructing the matrimonial home. We represented X in his property dispute with Y before the Family Court of Nicosia. Having collected the necessary material, X appointed a property valuer to evaluate the disputed matrimonial home. Subsequently, an application under the Matrimonial Property Law was filed with the Family Court of Nicosia, pursuant to which X claimed the part of the increase of the disputed matrimonial home which resulted from his contribution. Y filed a defence, denying the substantive allegations made by X. Her line of defence was that the plot of land was purchased by her and her father before the parties' engagement and without the applicant having contributed to the acquisition. She further alleged that the house was reconstructed by her father's personal efforts and not by those of X. The applicant, an employee from the Land Registry of Nicosia and two other bank employees testified before the Family Court during trial and in support of the applicant's case. Our valuer's evaluation was finally accepted by Y. To support her case, Y gave her own testimony before the Family Court and further called her father and an employee of a private construction company as witnesses. The Family Court accepted our position and decided that there was a dissolution of the marriage, the matrimonial home was built on land which was actually bought before the marriage with the prospect of marriage, there was an increase of value in the disputed property (the matrimonial home) and that X contributed in the increase of the property with money as well as through his personal efforts. Therefore, the Judge decided that all the preconditions of Article 14(1) of the Law No. 232/91 had been met, and issued a judgement in favour of X for the amount of €115,000 plus legal interest, as well as ordering legal costs in favour of X and against Y.