

## MARRIAGE CONTRACT IN THE RUSSIAN FEDERATION AND FOREIGN COUNTRIES

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**Abstract.** *In this article, the author analyzes the international experience in concluding marriage contracts between citizens. Statistics on the conclusion of marriage contracts are provided. Some controversial issues are considered, as well as personal views are expressed on the content, conclusion and termination of marriage contracts.*

**Keywords:** *marriage contracts, property, extremely disadvantaged situation, divorce proceedings, relationship.*

A marriage contract is an agreement between the persons entering into marriage, or an agreement between the spouses, which determines the property rights and obligations of the spouses in marriage and (or) in the event of its dissolution. This concept is contained in article 42 of the Family Code of the Russian Federation since 1996. According to this norm, citizens have the right to change the legal regime of joint property of spouses (everything acquired in marriage is the common property of the spouses), to establish a shared / separate regime, both for all property and for its individual types, regardless of when it was acquired.

It is known that the possibility of concluding marriage contracts was still in tsarist Russia, but during the Soviet era, the norm allowing this to be done was abolished.

The number of Russian couples entering into a marriage contract is still extremely small when compared with countries where this has already become a habit. In Europe and the United States, where the institution of the marriage contract has existed for over 100 years, at least 70% of couples entering into marriage conclude formal contracts [1]. In Russia, according to the statistics published on the website of the Ministry of Justice, the number of marriage contracts registered in 2017 is 88.672 units, in 2018 109.640 units, and in 2019 the number of registered marriage contracts reached 114.352 units. Note that according to the same statistics from the Ministry of Justice, the number of marriage

unions concluded in 2019 reached 951.074 (only 12% of them signed a marriage contract).

Young people, perhaps due to their age, and maybe because of any social prejudices, in their minds keep the idea that when concluding a marriage contract, they question their sincere feelings, denying themselves to use this construction, thereby exposing themselves to possible future negative consequences that they may face. Usually people believe that issues related to property, they will decide on the principle of fairness, reaching an agreement on equal terms, at the moment when such a need has already arisen. In spite of this, forgetting that the concept of justice is different for each person, and at the time of the divorce proceedings, it can disappear altogether, who knows what, as a result, spouses can sacrifice for their own interests. Khmel K. emphasized that marriages are made in heaven, but divorces in case of disputes about jointly acquired property are carried out by earthly judges. A prenuptial agreement will help to correctly formulate the rules of the game in advance, to preserve the property acquired over the years and the acquired business in case of loss of a happy feeling of family well-being [2].

Literally interpreting the concept of a marriage contract, which was mentioned above, it is clear that with the help of this institution, according to the legislation of the Russian Federation, exclusively property relations between spouses can be regulated. However,

scientists are raising the question in the scientific literature about the need to include non-property relations in the content of the marriage contract. For this reason, L.B. Maksimovich, she claims that the content of personal non-property rights and obligations is regulated by law and, as a general rule, cannot be changed by agreement of the parties, and if such is still concluded, then it is illegal [3]. For example, the subject of a marriage contract in the United States can be not only property, but also any other relationship between spouses. Such an agreement may provide for such rights and obligations as washing, cleaning, walking the dog, cooking dinner, etc. Often, future spouses themselves determine the form of responsibility in case of violation of contracts [1]. It seems that the inclusion in the marriage contract of provisions of a non-property nature will unnecessarily complicate this construction. It can be assumed that when this provision is included in Russian legislation, there will be no framework for non-property relations that can be regulated. This fact can be confirmed by the fact that article 42 of the Family Code uses the wording "extremely unfavorable situation", but there are no assessment criteria. Also, when entering into marriage, you should not overly formalize it and treat it as some kind of civil contract with strict conditions.

L.R. Syukiyainen draws attention to marriage contracts in the legal systems of the Muslim countries of the East. The legislation of Syria, Jordan, YAR, Egypt provides for the size of the mahr in marriage contracts, i.e. payment by the husband of the marriage ransom, to which the wife is entitled after the conclusion of the marriage contract. Article 18 of the Algerian Family Code also regulates marriage contracts - a marriage contract can be registered by a competent communal institution authorized by a court employee [4, p. 170].

UK law distinguishes between "prenuptial agreements" and "postnuptial agreements" depending on the moment of their conclusion. It is noteworthy that the possibility of concluding a marriage contract in the UK is provided not only to spouses and persons getting married, but also to persons who have registered a civil partnership. The Civil Partner-

ship Act 2004 contains provisions on the legal consequences of civil partnerships, similar to those that govern the legal consequences of marriage. The conclusion of marriage contracts between civil partners is regulated in a similar way (Articles 73-74) [5]. It is noteworthy that a prenuptial agreement in the UK must be concluded within 28 days before registering a marriage or civil partnership. According to Russian legislation, a marriage contract can be concluded both before marriage and immediately after. However, it is not specified how long the marriage contract is valid before marriage. A deeper approach to the issue of the subject composition of this agreement leads to the following conclusion - if the norm of Art. 41 of the RF IC to apply to all persons wishing to conclude a marriage contract, including those who have no intention of registering a marriage at the moment, this will create legal uncertainty. How long can an agreement exist without entering into legal force? According to N.E. Sosipatova, this cannot last for years. The general provisions of the law of obligations do not answer this question. Therefore, she considers an agreement concluded by persons who have not submitted applications for registration of marriage, a void transaction that does not give rise to legal consequences if in the future the marriage is not registered. The author also believes that in order to prevent legal uncertainty in the duration of the contract between the persons entering into marriage, who refused to register the marriage, this contract should be considered as terminated. The same opinion about the consequences of an unregistered marriage after the conclusion of a marriage contract was expressed by A.G. Masevich, who believed that the contract in this case is canceled [6]. According to Part 1 of Art. 11 of the Family Code of the Russian Federation, marriage is made after a month from the date of filing an application with the registry office. It is understood that if the parties do not enter into marriage, then, accordingly, the marriage contract is canceled as a general rule. However, we believe that it would be more expedient to enshrine this norm in the law so that in the future there are no ambiguous interpretations that the contract is concluded for the future, with a suspensive

condition that someday citizens will nevertheless marry.

The marriage contract is an innovation for us when compared with the emergence and development of this institution in Western countries. In this regard, we should take into account the experience of those who have already come a long way to improve this institution. It seems that it is worth paying more attention to the moment of the conclusion of the contract. The agreement itself should be supplemented with an agreement, which will state that the parties understand that this agreement will partially restrict the freedom of the court in resolving financial issues of the spouses. Also oblige the parties to inform

each other at the time of the conclusion of the marriage contract about their financial situation. This regulation exists in the USA. A party is released from the obligation to fulfill obligations under the contract if it can prove that it has not received reliable and complete information about the property, property rights and obligations of the other party [7, p. 280]. These measures may be appropriate both at the time of the conclusion of the contract, the parties are fully informed about the consequences of the conclusion, and at the time of divorce, and perhaps the provision of article 42 of the Family Code of the Russian Federation "extremely unfavorable situation" will no longer help.

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### БРАЧНЫЙ ДОГОВОР В РФ И ЗАРУБЕЖНЫХ СТРАНАХ

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***Аннотация.** В статье автор анализирует международный опыт заключения брачных договоров между гражданами. Приведена статистика по заключению брачных договоров. Рассмотрены некоторые спорные вопросы, а также высказано личное мнение по поводу содержания, заключения и расторжения брачных договоров.*

***Ключевые слова:** брачные договоры, собственность, крайне неблагоприятное положение, бракоразводный процесс, отношения.*