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## **Features of Legal Adjusting of Marriage Agreement in Russian Federation and Foreign Countries**

**Key words:** *family law, marriage agreement.*

**Annotation:** *Drafting of the marriage agreement became presently widespread practice between the married couples before entering into marriage. And it is constrained, foremost with the increase of level of legal literacy of population. People have become interested in the rights and duties, and also by possibilities to secure themselves and their property from stranger encroachment, including from encroachments of a future (former) spouse. Thus, it should be noted that every country, depends on the legal system and the level of development, supposes different terms that can join in a marriage agreement.*

According to statistics, 70% couples in America and countries of the European Union are concluded by the marriage contracts (6, p. 109-110). Many theorists explain the growing popularity of marriage agreements, especially in the countries of the West, with spinuping feminism motions and fight of women for the rights. However, such statement, to my mind, is impossible to consider faithful. Practice shows that in most cases a wealthier spouse (husband or wife) that does not want to part with the half of the property in case of divorce insists on the conclusion of the marriage treaty.

The appearance of the institute of the marriage agreement in Russia was the objective factor of the development of modern society. In Russian Soviet Federative Socialist Republic in Code about marriage and family was envisaged only one mode of property of the married couples - the mode of common joint property (1, art.20). But with the introduction to the action of the first part of the Civil code of the Russian Federation from January, 1, 1995, in that in the point of 1 article 256 position gained a foothold that the property, accumulated by the spouses during their married life, shall be their joint, or community property, unless another regime has been established for this property by an agreement between them (3), and after and the Domestic code of the Russian Federation possibility of division of property of the married couples appeared on their mutual assent (4).

The main feature of the marriage agreements concluded on the territory of the Russian Federation is the fact that they regulate exceptionally property relations between the married couples. Thus, the married couples can not plug in a marriage agreement distribution of duties of doing or bearing-out of garbage dishes, and also other situations that can arise up in the married life.

The legislation of the most developed countries supposes the legal adjusting of property relations of the married couples on legal or contractual basis. The legal mode of

property can be two kinds: the mode of community (Hungary, Italy, Poland, France, Croatia, Czech Republic, Switzerland, some states the USA) and the mode of separateness (Great Britain, Germany, most the states the USA) (7).

One of fundamental differences in the right adjusting of the marriage agreement in Russia and foreign countries is his publicity. According to article 16 the Fundamentals of Legislation of the Russian Federation on Notaries a notary is under the obligation to keep the information that he finds out in connection with the realization of his professional activity in secret (2). This way, it is possible to draw the conclusion that the secret of marriage agreement operates in Russia.

It is necessary to mark that in foreign countries all is arranged vice versa. The terms of marriage contract are open and accessible for all persons who are interested in them. For example, article 1397-3 of the Civil code of France 1804 straight specifies on publicity of the marriage agreement: «Lorsque la désignation de la loi applicable est faite avant le mariage, les futurs époux présentent à l'officier de l'état civil soit l'acte par lequel ils ont opéré cette désignation, soit un certificat délivré par la personne compétente pour établir cet acte. Le certificat énonce les noms et prénoms des futurs époux, le lieu où ils demeurent, la date de l'acte de désignation, ainsi que les nom, qualité et résidence de la personne qui l'a établi. Si l'un des époux est commerçant lors du mariage ou le devient ultérieurement, l'acte de désignation de la loi applicable passé avant le mariage ou au cours de celui-ci est publié dans les conditions et sous les sanctions prévues par les dispositions relatives au registre du commerce et des sociétés» (5) (While pointing on an applicable right is accomplished to marriage, the future married couples present act they produced this pointing that or certificate given out by a person competent on drafting of this act to the public servant, leading the acts of the civil state. The last names and names of the future married couples, place are specified in a certificate, where they live, the date of act of pointing, and also the last name, status and place of accommodation of person that made it. If one of the married couples is a merchant during marriage or became such one afterwards, the act of decision of applicable right, made up before the marriage or during it, is published on the terms and under penalty of the approvals, envisaged by the positions related to the trade register and register of societies).

In spite of the fact that England is one of front-rank countries in application of the marriage agreement, yet quite recently courts have not taken the condition of the marriage contract into account, grounding the actions by a circumstance that a marriage agreement violates the legal order of division of marriage property. It is marked by Jeremy D. Morley in "Prenuptial Agreements in England": "Until recently the English courts held that prenuptial and post nuptial agreements would not be enforced on the ground that they violated public policy" (8). However time changes and now the English courts adhere to opinion that a marriage agreement can be taken into account at permission of financial questions between the former married couples.

Thus, drawing the conclusion, it is possible to mark the circumstance that in Russia the institute of marriage agreement is only on the stage of the development, while the history of the marriage agreement in foreign countries counts more than ten years. From data of the Federal notarial chamber of Russia, about 4 percent of newly-married couples go to the notary. From 1,1 million pairs entering into marriage during 2012, a contract was designed only by 45 thousand (9). However, already now practices mark the increasing number of

"contractual marriages". Victoria Pashkova a specialist on a family law in an interview for the Russian newspaper notes: "Today the nubility has risen and people more often enter into marriage, having already earned something: we make marriage agreements between the married couples with the knowledge, that property and feelings are not connected with each other, that this document is the not sign of mistrust to each other, and by the best method of settlement of property relations, especially in case of dispute. When people divorce, as a rule, not all succeed in the peaceful way of agreement, a great deal drops off, mutual claims and requirements begin, and in this case a marriage agreement is the best decision of property problems" (9).

Examining a question about that, whether it is possible to adopt experience of occident and include the row of positions of normatively-legal acts of the foreign states, regulative drafting, change and stopping of marriage contract, in the Russian legislation, it is necessary to take into account the historical and cultural features of our country. From one side, drafting of marriage agreements protects the property rights and interests of the future married couples, however on the other hand such detailed regulation of marriage relations can result in that marriage will be perceived exceptionally as a financial transaction. For example, in the USA a marriage contract is made by every third couple, but here and every second divorces. To assert that a marriage agreement is guilty in everything, certainly, does not make sense. But in the USA the married couples have possibility to plug not only the terms of distribution of property between the married couples but also regulation of the personal life of the married couples in a marriage agreement, up to the details of intimate life. In the Russian Federation while there is not plugging possibility in the marriage agreement of such positions, maybe, it will never be. Converting of domestic relations into financial has influence on becoming of society and institution of family on the whole. By developing the legal culture of population, legal methods of protection of property rights, it is impossible to forget about development of other spheres of public life, namely social and spiritual. Therefore, in the conclusion, it should be noted that legal regulation of the marriage agreement in the Russian Federation appears to be the most successful: only positions, regulative property rights for the married couples, can be included in the marriage contract.

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