



ISSN: 2222-4955 (Print)
ISSN: 2222-4963 (Online)
CODEN: AMSDFK



ARTICLE

STUDY ON THE PRACTICAL APPLICATION OF MATRIMONIAL PROPERTY AGREEMENT AGREEMENTS

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ARTICLE DETAILS

ABSTRACT

Article History:

Received 14 July 2022
Accepted 11 October 2022
Available online 20 October 2022

Academic circles have been conducting research on the marital property agreement system, but it is only limited to the theoretical level of legislative model, nature and effect, and it is obvious that the practical application of marital property agreement in practice is analyzed. Matrimonial property agreements shall adopt an original legislative model, and the husband and wife may create the content of the property agreement on their own. In practical application, matrimonial property agreements have multiple functions such as maintaining the feelings of husband and wife, protecting the legitimate rights and interests of husband and wife, saving judicial resources, and relieving court pressure. It is precisely these practical significances that makes the agreement widely used in life, including but not limited to applying to the settlement of marriage problems of persons who hold family property on behalf of others. Any agreement arising from autonomy of will has certain risks, and there are corresponding disputes over the nature and validity of the matrimonial property agreement, and in order to ensure the effective application of the agreement, it is very necessary to notarize the matrimonial property or inform a third party.

KEYWORDS

Matrimonial Property Agreement; Applicable Circumstances; Risk Prevention

1. SORT OUT THE CONTENT OF THE MATRIMONIAL PROPERTY AGREEMENT

1.1 Relevant legal provisions

According to article 1065 of the Civil Code of the People's Republic of China (hereinafter referred to as the "Civil Code") on the property system for husband and wife, men and women may agree that the property acquired during the existence of the marriage relationship and the premarital property shall be separately owned, jointly owned or partially owned separately or partially jointly owned.

The article first excludes the application of the statutory property regime, and secondly establishes three types of property regimes, namely separate property regimes, general community regimes and limited community regimes. However, due to the lack of specificity and clarity in the content of the third type of property stipulated in this article, there is no arrangement for the content under each property system, and China's current laws do not clearly stipulate the legislative model of matrimonial property agreements in legislation. Therefore, due to different understandings of this provision, theory and practice also have different views on the content of matrimonial property agreements.

1.2 Theoretical discussion on the legislative model of the agreed property system

1.2.1 Alternative legislative model

That is, the selective contractual property system means that the civil

law code clearly stipulates several typical matrimonial property systems, within which the parties can freely choose, and as for the content stipulated outside the law, they cannot choose^[1]. Under this legislative model, the parties can only choose one of the three types established by the Civil Code to make an agreement on personal property and joint property of the spouses. Otherwise, it will not produce legal effect.

China's Supreme People's Court adopts this legislative model, that is, the situation where the property of one spouse is agreed to be owned by the other party is attributed to the gift between the husband and wife, and the application of the agreed property system is excluded. Although this provision expands the scope of application of the gift rule, it is no different from the value concept conveyed in Article 6 of the original Judicial Interpretation (III), and its consideration is that Article 1065 of the Civil Code only stipulates three types of agreed property systems: separate ownership, joint ownership and partial separate and partial joint ownership, which is a closed type of contractual property system^[2]. Therefore, the agreement on matrimonial property beyond the scope set out in this article is not recognized by law and is not binding on the parties.

1.2.2 Original legislative model

That is, the original contractual property system means that the law does not specify in advance which one or more matrimonial property regimes are provided to the parties to choose, and the husband and wife can create the content of the property agreement on their own, unless the agreement violates it public order and morals or restrictive provisions of the law shall be subject to the freedom of the parties^[3].

Under this legislative model, the parties are free to choose the type and content of the agreed property regime according to their personal will. The law should recognize and protect this choice of the parties, rather than restricting or prohibiting it.

For example, Xu Li believes that the husband and wife want to achieve the purpose of changing the legal property system, and adopt the method of agreeing on specific property, which is confirmed by a judicial decision, if the husband and wife are reconciled. Agreements made in respect of this particular property are excluded from the scope of the contractual property regime, then article 19 almost pointless^[4]; Tong Fuzhang believes that article 19 of the original Marriage Law does not exhaust all the circumstances that can be agreed upon between husband and wife, and this article is only an illustrative provision for the three types of property regimes, and only has an exemplary function, rather than an enumerated provision^[5].

1.3 Selection of original legislative models

Article 1065 of the Civil Code adopts an original legislative model, that is, the husband and wife can either stipulate that one party's premarital property belongs to the other party in the matrimonial property agreement, or stipulate that it will be jointly owned by the husband and wife, which is protected by law and binding on both parties. The reasons for its consideration are as follows:

First of all, we can refer to the most authoritative interpretation of the content of this provision in the Interpretation of the Marriage and Family Compilation^[6].

Secondly, under the premise of choosing to exclude the application of the legal property system, Article 1065 of the Civil Code adopts the word "may", which more reflects the autonomy of the parties, rather than using the mandatory word "shall". On the other hand, the law does not provide for punitive consequences for violation of this provision. Therefore, as long as it does not violate public order and good customs and the prohibitions of the law, the husband and wife can freely agree on the content of the property agreement.

Third, since the law is not specific and clear about the content of the third type of property regime, the extension of "respective ownership" can be expanded to include not only "the ownership of the personal property of one party before and after marriage", but also "the ownership by one party of the personal property of the other party before or after marriage". Language is open-ended, and the word "each" contains infinite possibilities, and "each" can be interpreted arbitrarily under the premise that the law is vague. This interpretation is compatible with the original legislative model^[7].

Finally, with the vigorous development of the market economy, people's income level has generally increased, personal wealth has also increased, citizens, especially women, have become more and more vocal about personality independence and property independence, and more and more couples choose to independently agree on premarital and post-marital property, excluding the application of the legal property system. In order to adapt to the development of the times and meet the diversified needs of couples, this original legislative model is the most suitable choice.

2. PRACTICAL APPLICATION OF MATRIMONIAL PROPERTY AGREEMENTS

2.1 The significance of signing a matrimonial property agreement

The family is the most basic form of social life organization of human beings, and the family is the foundation of a stable society. To a certain extent, the signing of a marital property agreement is conducive to maintaining the feelings of the husband and wife, stabilizing the marriage relationship, and protecting the legitimate rights and interests of the husband and wife, which is of great significance to the stable development of the family and society.

1. It is conducive to maintaining good feelings between husband and wife and maintaining the marital relationship between husband and wife

With the development of the times and the progress of social ideology,

there are many unstable factors that affect the emotions of husband and wife, and if there is no clear division of marital property under this premise, then the consequences of aggravating the emotional breakdown of husband and wife will occur. Entering into a matrimonial property agreement can not only allow both parties to economically and reasonably plan the use of their property, but also invisibly bring psychological pressure to them, prompting both parties to better restrain themselves, cultivate a sense of family responsibility, and help both husband and wife work together to create a better family.

2. It is conducive to protecting the legitimate rights and interests of both husband and wife

Husband and wife share weal and woe, and mutual respect and love between husband and wife have always been the traditional virtues of the Chinese nation. However, this is only an ideal, in modern society, there are many situations where the marriage relationship has come to an end, and there are also various contradictions and disputes between the husband and wife. Once the marital relationship deteriorates, signing a matrimonial property agreement to clarify the distribution of property not only facilitates the handling of property, but also prevents the phenomenon of "being indebted" without the knowledge of one of the spouses. In addition, there is a large gap in the economic ability and wealth level of some couples, and it is also very rational to sign a matrimonial property agreement. These will protect the legitimate rights and interests of both husband and wife to a certain extent.

3. It is conducive to saving judicial resources and relieving the pressure on the courts.

The annual increase in the divorce rate has led to a significant increase in the number of divorce cases heard by the courts, but most courts are short of human and material resources, which directly leads to the inefficiency of court trials. If the husband and wife can sign a matrimonial property agreement when they have a good relationship, and provide sufficient written materials that can be directly adopted for divorce proceedings, it can greatly shorten the trial time, improve trial efficiency, and ease the court's trial pressure.

2.2 Application of the matrimonial property agreement

1. It is suitable for solving the problem of marriage of people who hold family property on behalf of others

In order to pass on family wealth, some controlling shareholders often choose to transfer the company's shares, real estate and financial assets to their children. In family businesses, most of the shareholders are family members and rarely have a written nominee holding agreement, which makes the other spouse unaware of the inconsistency between the owner of the asset and the actual owner after marriage, and in fact the nominee is neither personal property nor small family property. If the party holding the assets on behalf of the nominee does not inform the other party of this situation, it will not only affect the interests of the other party, but also infringe on the interests of the nominee. In summary, a person who holds a large amount of family property on behalf of a person is most suitable for signing a matrimonial property agreement, and explaining his personal property and his nominee property before marriage, and applying the agreed property system to the premarital property and the property acquired during the existence of the marital relationship, which is not only conducive to the protection and management of family property, but also conducive to the stability of marital relations.

Holding a large amount of family property on behalf of a family member will inevitably be more complicated than that of ordinary couples when signing a matrimonial property agreement, which makes it necessary to clearly list relevant issues in the property agreement. For example, the disposal of part of the joint property after marriage, the assumption of debts arising from the joint life of the family, the compensation of the woman's housework, living expenses, child support, etc. By clarifying these issues, the status of husband and wife in the marriage relationship is made more fair, and conflicts and disputes between the husband and wife due to property issues after marriage are also prevented.

2. It is suitable for solving the family security problems of married entrepreneurs when starting a business

In the early stage of entrepreneurship, the development of the company requires a large amount of investment funds, some self-made entrepreneurs inevitably have a large amount of debt in their personal name, but the lagging characteristics of the company and investment to bring returns make it not immediately produce actual benefits, if an unexpected change occurs, it will not only make the entrepreneur face the crisis of entrepreneurial failure, but also bring great risks to the whole family. The most typical case is the unexpected death of the founder of Dr. Chunyu and the founder of Pony Galloping. Most people might think that in both cases, the founders may leave valuable equity, their wives may inherit the equity, but they may be incurred with debts of unlimited joint and several liability. According to the current provisions on the qualifications of shareholders in the Company Law, the articles of association of a company may make separate provisions on the issue of shareholder qualification succession of the legal successors of natural person shareholders. In other words, based on the human nature of the entrepreneurial team, there are also situations in the articles of association where the heirs of shareholders can only inherit the property rights and interests of the equity, but cannot inherit the qualifications of shareholders. On the other hand, the husband or wife needs to bear the burden of proof for the clearly agreed personal debt, and because of the difficulty of proof, the other spouse is likely to bear the responsibility for satisfying the debt.

If one of the husband and wife starts a business, if the business is successful, it will naturally bring a happy life to the family, but the hardships and fatigue of starting a business consume the body, and the road to ideal pursuit is inevitably difficult. Once a sudden accident occurs, it will undoubtedly have a heavy blow to the company and family. A responsible entrepreneur should use legal tools to plan and arrange family assets in advance to prevent uncertain risks from occurring in the early stage of borrowing and company operation. The Civil Code clearly stipulates that the counterparty may not require the other spouse to settle off with his property, provided that he knows that the husband and wife have made an agreement on their own property. According to this provision, after entering into a matrimonial property agreement, the entrepreneur should present the agreement to the creditor when borrowing debts and require him to sign the agreement or otherwise prove that the creditor is aware of the agreement to avoid creditors in court asking the husband and wife to bear debts jointly on the grounds of ignorance in order to protect family property. In summary, the matrimonial property agreement is a legal document that married high-net-worth individuals must consider signing, through which the agreement is used to prevent and plan for debt problems, which is cheaper than the cost and value paid after debt problems occur.

3. It is suitable for solving the problem of remarriage of the elderly

China's population aging rapid progress and into a new period, middle-aged and elderly remarriage has become a very common social phenomenon, compared with the first marriage couple, remarried couples family property relations and inheritance issues are more complicated. The emotional foundation of the remarried couple is weak and the children of all parties are cautious about their parents' remarriage, especially the party with better economic conditions is worried that the other party is under the guise of marriage, and the actual purpose is to cheat the old age after marriage Human property. Due to these worries about the hidden dangers of marital conflicts caused by the distribution of marital property, many divorced or widowed middle-aged and elderly people are unable to make a decision on whether to marry or remarry. In order to solve the dilemma of the elderly in remarriage and provide a stable foundation for the marriage of the elderly, the prenuptial property agreement of the remarried couple is particularly necessary. By signing a property agreement, it is legally binding on both parties, which can not only safeguard the respective property rights of both husband and wife, but also help maintain the long-term stability of the marital relationship between the two parties.

Some elderly people who have no real estate and no residence before marriage or who stipulate in the property agreement that the property belongs to the other party are worried about their own residence after the death of the other party, and can also agree on the issue of the right of residence according to actual needs in the premarital property agreement. Chapter 14 of the Civil Code clearly stipulates the relevant content of the right of abode and stipulates that the establishment of the right of abode must be in written form. However, the law does not

specify what form of writing to be used. Then, in order to ensure the old age of the remarried couple, in addition to signing a residency contract to establish the right of residence for the other half, it is also advisable to establish it in the form of a property agreement.

1. Suitable for efficient and fast property division

If the husband and wife request the division of property during the marriage relationship, they must comply with the circumstances stipulated in the Civil Code under which the division of property can be carried out. It is limited to the following two situations, one is that the act of one of the spouses seriously damages the interests of the joint property of the husband and wife, and the other is A person under legal maintenance obligations who is under legal support has a serious illness and needs medical treatment, but the other party does not agree to pay the related medical expenses. Based on the above circumstances, one of the spouses may apply to the people's court for the division of the joint property^[8]. The property acquired during the existence of the marital relationship between husband and wife in China is subject to the legal property system and belongs to joint ownership. Under the premise of no divorce and no prosecution, only when the above two situations occur, one of the spouses can request the division of property. Marriage has many variables, and there will be various reasons for dividing property, so in order to avoid trouble and quickly divide property, signing a matrimonial property agreement is a more efficient option.

3. RISK ANALYSIS OF MATRIMONIAL PROPERTY AGREEMENT AGREEMENT

Although the matrimonial property agreement agreement has a high degree of effectiveness, it can be applied to various situations in practice to solve the property problems of the husband and wife, protect the legitimate rights and interests of the husband and wife, and also play a role in stabilizing the marriage relationship. However, it is precisely because of the efficiency of matrimonial property agreements and the ambiguity of legal provisions that there are also risks in their application.

3.1 The nature and validity are disputed

Collation and analysis of two cases that were tried and concluded by the Beijing No. 3 Intermediate People's Court, one case in which the husband and wife agreed that a house belonging to the joint ownership was owned by the other party, and the house was registered in the name of one party, and after the death of the party, although the house was not registered, it still produced the effect of a change in property rights; In another case, the husband and wife have agreed to change the premarital property of one party to joint ownership and the other party's personal ownership, and although the change has been registered, they still have the right of revocation according to the gift. Although both cases were tried by the same people's court, the reason for the occurrence of the situation of "same case with different judgment" is that the determination of the nature and validity of the matrimonial property agreement is controversial both in judicial practice and academic theory.

3.1.1 There are differences in the nature determination

On the issue of determining the nature of the matter, the main focus of the dispute is that the husband and wife agree to return the property of one party to the joint ownership of both parties or to the other party. Does Article 1065 of the Civil Code or Article 32 of the Interpretation of the Marriage and Family Compilation of the Supreme People's Court (I) apply? In response to the above disputes, there are the following views: First, regardless of whether the premarital personal property of the two parties is agreed to be owned by one party, jointly owned or partially jointly owned or partially owned by individuals, or whether the joint property of the husband and wife during marriage is agreed to be owned by one party, it is a "property gift agreement"; Second, if it is agreed that one party's premarital property is jointly owned or partially jointly shared, it is characterized as an "agreed property system agreement", and if one party's premarital property is agreed to be owned by the other party, it is characterized as a "property gift agreement", and many practical and theoretical circles agree with this view; The third is to claim that any agreement between husband and wife is a property contract.

First of all, most theoretical and practical circles believe that the agreement between husband and wife to return one party's premarital

property to the other party is a gift between husband and wife, and still belongs to the category of property relations. According to the relevant provisions on the change of property rights in the property title of the Civil Code, the registration procedures for the transfer of housing must be completed in order to produce the effect of the change of property rights. However, if the husband and wife agree that one party's premarital personal property is jointly owned, or if the joint property is owned by one party, whether it is a gift and whether it is necessary to complete the change of property rights has the above two views. Those who claim that it is a "gift between husband and wife" believe that this agreement should be positioned as a legal act with the nature of property law, which conforms to the unilaterality and gratuitous nature of gift contracts. Then, since the agreement on the gift of property between husband and wife has the characteristics of property, the court can refer to the provisions of the contract part when adjudicating. Those who claim that it belongs to the "agreed property system agreement" believe that the purpose and relevant background of the conclusion of the property agreement between husband and wife must exist, and they should respect their arrangements for changes to their property. The purpose of most matrimonial property deeds is to establish a life between husband and wife, and is based on cooperation and mutual assistance, and the donor often gives the other party other contributions in family life. Self-sacrifice is seen as consideration for the act of gift, and therefore it is called gratuitous, but it is paid^[9]. The provisions of the Marriage and Family Part of the Civil Code shall be applied and shall be legally binding on both parties.

3.1.2 There are differences in the understanding of the meaning of "legally binding on both parties"

According to the provisions of the Civil Code, the matrimonial property agreement is legally binding only on the husband and wife, and cannot be used against an unwitting third party other than the parties. There is no doubt that there is no controversy in the academic community in terms of external effectiveness. In terms of internal effect, is the "binding force" stipulated in the provisions the effect of a change in property rights directly occurring between the husband and wife, or the effect of the claim within the husband and wife? The provisions are not clear. As a result, a dispute arises over the validity of claims and the effects of property rights. Most scholars believe that changes in property rights caused by legal acts should be distinguished from the requirements for the effectiveness of changes in property rights based on marital relations, and based on the relationship between husband and wife, the distribution of marital property should respect the will of both parties, so as to preserve the marital relationship. Once a property agreement between husband and wife is established and takes effect, it can have the effect of a change in property rights. This proposition can be supported theoretically, both from legal provisions and from the registration antagonism and property contract model.

Some scholars believe that from the perspective of the legislative purpose of the law, "legally binding on both parties" should be understood as the binding force of claims, and the agreed change of property needs to follow the rules of change of property rights, movable property needs to be delivered, and immovable property needs to complete the registration of changes. The Civil Code mostly adopts "effective effect" for the expression of changes in property rights, while in the contract part of the Civil Code, it adopts the expression "legally binding", such as "a contract established in accordance with law is legally binding on the parties". After the contract is formed and comes into force, both parties should be legally bound by the contract, and the next question is whether one party has the right of withdrawal after the dispute arises^[10]. From the analysis of these provisions, it can be inferred that the "legally binding" of the property system agreed by husband and wife in the marriage and family chapter also has only the effect of creditor's rights.

Based on the above analysis, due to the uncertainty of the nature and validity of the matrimonial property agreement, there will be situations where the court finds it invalid when it is used in practice, and cannot play a role in the distribution of matrimonial property.

3.2 External effect

As mentioned above, only a third person is aware of the distribution of property by the husband and wife under the agreed property system,

and the debts owed by one of the spouses to the outside world shall be paid off by the entire property of the husband or wife. From this, it can be seen that the property contract between husband and wife Whether it is effective against a third party depends on whether the third party is aware of the agreement, and both husband and wife bear the burden of proving the knowledge of the other party, otherwise the third party is deemed to be in good faith, and the property agreement is invalid for the third party. Under the conditions of market economy, marital property will often enter the market and become the object of transactions. Couples whose relationship has broken down may sell property that has not been transferred or changed to an uninformed third party, in order to achieve the purpose of destroying the agreement on marital property and retaliating against the other party. Even if an outsider files an action against enforcement, the court will not support it on the grounds of safeguarding the security of the transaction and protecting the interests of creditors.

Therefore, the judgment of whether a third party knows will affect the external validity of the matrimonial property agreement, and often one of the spouses needs to bear the burden of proving the third party's knowledge, and the difficulty of proving is one of the risks in the application of the matrimonial property agreement.

4. RISK PREVENTION OF MATRIMONIAL PROPERTY AGREEMENT AGREEMENTS

4.1 Notarization of matrimonial property agreements

The determination of the nature and validity of matrimonial property agreement by various courts in China. There is a dispute that when a husband and wife agree to return one party's premarital property to the other party, even if the change is not registered or the court considers the agreement to be a gift, due to notarization, one of the spouses no longer has the right of arbitrary revocation, thus protecting the legitimate rights and interests of the other spouse. The notarization of the matrimonial property agreement shall meet the following requirements at the same time: First, the husband and wife should apply for it themselves, because they must not entrust others to do it on their behalf based on their specific status. Second, both parties must have full capacity for civil conduct and express their true intentions; Third, the content of the agreement should be related to property ownership, and must not include "child support" and "loyalty agreement".

4.2 Inform third parties of the existence of the agreement and retain evidence

Under the agreed property system, if there is a debt owed by one of the spouses outside the home, and this debt is not used for the daily needs of the family. Joint investment operation, in this case, if one party is unable to fulfill the corresponding proof obligations, it must jointly bear the debt with the other party Liability for liquidation. Although this provision is beneficial to creditors, it is for the debtor to collude with third parties thus providing the possibility of harming the interests of the other spouse; On the other hand, some informed creditors take advantage of the difficulty of proof to require both spouses to bear debts jointly, which is contrary to the original design of the system of matrimonial property agreements. Therefore, when one of the spouses raises debts, in order to avoid the above situation, he or she may require the creditor to sign the matrimonial property agreement agreement, or prove that the creditor is aware of the existence of the agreement by means of audio or video recording.

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