

Marriage Contract 'huwelijks voorwaarden'

By: **Mirto F. Murray, attorney at law**



Looking through his firm glasses the official looking gentleman asks the bride-to-be: 'what is your answer to that question?'. Struggling to keep the tears flowing from her eyes she answers while glancing at her contently smiling hubby-to-be: 'I do....'

Wedding bells are ringing and apart from the proverbial weeping mother-in-law of the bride everybody seems happy. Neatly groomed the husband to be stands next to his soon to be wife who's dressed elegantly in white. The Civil Registrar poses the famous questions in which he - obligated by law - officially inquires whether the bride and groom accept each other as spouses and whether they will faithfully carry out all duties which arise by operation of law from their marital status. It is this question that is answered with those famous two words: 'I do'.

'I do...' she says almost sobbing '..... agree with the marriage contract or huwelijks voorwaarden or whatever this paper is called. So I'll sign the damn thing!'

The marriage contract or huwelijks voorwaarden, as it is known in the Dutch language, does not seem to coincide with the happiness usually seen at weddings. Originally the entering into a marriage contract was solely used to prevent the family fortune falling in the hand of the other less fortunate family by virtue of marriage. In the United States of America a similar set of provisions between spouses is known as a prenuptial agreement.

In the Netherlands Antilles the statutory community of property (*gemeenschap van goederen*) exists between spouses by operation of law from the time of the solemnization of the marriage insofar as no derogation is made there from by a marriage contract. This statutory rule of law is captioned in the Civil Code and provides for a system whereby the community comprises, where its assets are concerned, all present and future property of the spouses,

with the exception of property acquired pursuant to a hereditary succession, a bequest or a gift. The community also comprises, where its liabilities are concerned, all the debts of both spouses. The community of property automatically means that in the event of a divorce the net worth of all assets and liabilities will be divided by half by the two former spouses regardless of their individual contribution to the assets and liabilities.

One can imagine that the community of property used to be a phantom to many wealthy parents which at forehand threatened to demise the festive character of the wedding of their child. For over a hundred years the entering into a marriage contract has been the solution to this specter.

Hansom as ever he replies 'but honey, you know I love you and that if it wasn't for my parents I would not have you sign this document'.

The marriage contract must be entered into by a notarial instrument (notariele akte) and may both be made by the prospective spouses prior to their marriage and by spouses during their marriage. After solemnization of the marriage a marriage contract may only be made or altered when the marriage has lasted one year or more. Approval of the court of first instance is required for making or altering marriage contracts during a marriage. It is therefore recommended to enter into a marriage contract prior to the solemnization of the marriage. Marriage contracts made prior to a marriage enter into force from the date of solemnization of the marriage.

Provisions in a marriage contract may be raised against persons who were unaware of the existence of the marriage contract only if these provisions were registered in the public matrimonial property register (*huwelijksgoederenregister*) kept at the clerk's office of the court of first instance within whose jurisdiction the marriage is solemnized or, where a marriage is solemnized abroad, at the clerk's office of the court of first instance in Curacao. Therefore in case a marriage contract is not registered as mentioned above the provisions of said contract bind only the spouses. Third parties - creditors not the least - may recover on the factual community property like there was no marriage contract!

With her sweetest voice she says: 'I said I would sign it not only because I love you too, but also since it will protect my assets as well.' And thinking of her sweet revenge she ads: 'being a neurosurgeon I do expect my assets to accrue faster than yours'.

The spouses may derogate in their marriage contract from the provisions of the statutory community property regime provided that the stipulations do not conflict with provisions of mandatory law, *bonos mores* (*goede zeden*) or public policy. The provision may not provide that a spouse is committed to a larger share of the liabilities than that spouse shares in the community property.

Basically there are three major types of marriage contracts; (i) the first allowing some form of community property, for instance limited to one asset e.g. the matrimonial home (*echtelijke woning*); (ii) the second allowing community property of profit and loss or community property of civil fruit and income e.g. each of the spouses remains full ownership of all his personal assets and liabilities and the community property only reflect to mutual assets and liabilities acquired after the marriage (iii) the third allowing no form of community property whatsoever; a marriage contract precluding any claim by one spouse on assets accruing to the other spouse during the marriage (*koude uitsluiting*).

Depending on the specific situation of the future spouses the entering into a marriage contract can be recommendable. Obtaining expert legal advise on your specific situation is however an absolute necessity.