

BILL No. 7 of 1990

Saturday, 17th March, 1990

PARLIAMENT OFFICE,
Public Buildings,
Georgetown,
Guyana.

90—03—14

The following Bill which will be introduced in the National Assembly is published for general information,

F. A. Narain.
Clerk of the National Assembly.



BILL No. 7 of 1990

MARRIED PERSONS (PROPERTY) (AMENDMENT)

BILL 1990

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Insertion of new section 6A in the Principal Act.
Repeal and re-enactment of section 10 of the Principal Act.
4. Amendment of section 15 of the Principal Act

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A BILL

Intituled

AN ACT to amend the Married Persons (Property) Act.

A.D. 1990

Enacted by the Parliament of Guyana:-

Short title.

1. This Act, which amends the Married Persons

Cap. 45:04

(Property) Act, may be cited as the Married Persons
(Property) (Amendment) Act 1990.

Insertion of
new section
6A in
the Principal
Act.

2. The Principal Act is hereby amended by the
insertion after section 6 of the following section
as section 6A -

"Money or
property
derived
from house-
keeping.

6A. Where any question arises as
to the right of a husband or wife
to money derived from any allowance
made by the husband or wife for the
expenses of the matrimonial home or
for similar purposes, or to any
property acquired out of the money,
the money or property shall, in the
absence of any agreement between
them to the contrary, be treated
as belonging to the husband and
the wife in equal shares."

Repeal and re-enactment of
section 10 of
the Principal
Act.

3. Section 10 of the Principal Act is hereby re-
pealed and the following section substituted therefor -

"Investments
by spouse of
money of
other spouse
without con-
sent; gifts
in fraud of
creditors.

10.(1) Where any deposit or in-
vestment is made by a spouse by
means of money of the other spouse
without his or her consent, the
High Court may, upon an application
under section 15, order the deposit
or investment and the dividends
thereof to be transferred and paid
to the other spouse.

(2) Nothing in this Act shall give validity as against the creditors of a person to any gift by that person to his or her spouse of any property, which, after the gift, shall continue to be in the order and disposition or reputed

ownership of such person, or to any deposit or other investment of moneys of such person made by or in the name of his or her spouse in fraud of his or her creditors; but any moneys so deposited or invested may be followed as if this Act had not been passed."

4. Section 15 of the Principal Act is hereby amended in the following respects -

Amendment of section 15 of the Principal Act.

- (a) by the renumbering of the opening portion ending with the words "thinks fit:" as subsection (1) thereof and by the substitution for the colon of a full stop;
- (b) by the insertion after subsection (1) as so renumbered of the following subsections as subsections (2), (3), (4), (5), (6), (7), (8), (9), (10), and (11) -

"(2) For the avoidance of doubt it is hereby declared that any power conferred by subsection (1) to make orders with respect to any property includes power to order a sale of the property.

(3) Any right of a party to a marriage under subsection (1) to apply to a judge includes the right to make such an application where it is claimed by one party (in this section called "the claimant

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party") that the other party (in this section called "the respondent party") has had in his possession or under his control -

(a) money to which, or to a share of which the claimant party was beneficially entitled (whether by reason that it represented the proceeds of property to which, or to an interest in which, the claimant party was beneficially entitled, or for any other reason); or

(b) property (other than money) to which, or to an interest in which, the claimant party was beneficially entitled,

and that either that money or other property has ceased to be in the respondent party's possession or under his control or that the claimant party does not know whether it is still in the possession or under the control of the respondent party.

(4) Where, on an application made to a judge by virtue of subsection (3), the judge is satisfied -

(a) that the respondent party has had in his possession or under his control money or other property as mentioned in subsection (3) (a) or (b); and

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- (b) that he has not made to the claimant party in respect of that money or other property such payment or disposition as would have been appropriate in the circumstances,

the power to make orders under that subsection shall be extended in accordance with subsection (5).

- (5) Where subsection (4) applies, the power to make orders under subsection (1) includes power for the judge to order the respondent party to pay to the claimant party -

- (a) in a case falling within subsection (3) (a), such sum in respect of the money to which the application relates, or the claimant party's share thereof, as the case may be; or

- (b) in a case falling within subsection (3) (b), such sum in respect of the value of the property to which the application relates, or the claimant party's interest therein, as the case may be,

as the judge may consider appropriate.

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(6) Where on an application by virtue of subsection (3) it appears to the judge that there is any property which -

(a) represents the whole or part of the money or property in question; and

(b) is property in respect of which an order could have been made under that subsection if any application had been made by the claimant party thereunder in a question as to the title to or possession of that property,

the judge (either in substitution for or in addition to the making of an order in accordance with subsection (5)) may make any order under that subsection in respect of that property which he could have made on such an application as is mentioned in paragraph (b).

(7) Any power of a judge under subsection (1) to direct inquiries or give any other directions in relation to an application under that subsection shall be exercisable in relation to an application made under subsection (3).

- (8) In subsection (4) "disposition" does not include any provision contained in a will, but, with that exception, includes any conveyance, assurance or gift of property whether made by an instrument or otherwise.
- (9) When hearing an application, where the parties were living together for less than five years, in respect of property in dispute under subsection (1) the judge in making such order with respect to the property as he thinks fit shall take into consideration and quantify, in such manner and to such extent as may seem just to him in all the circumstances of the case, the contribution made by a spouse to the marriage and to the welfare of the family, including any contribution made by looking after the home and caring for the family:

Provided that the judge shall award the claimant party, where the parties were living together -

- (a) for five or more years and where the claimant party was not working, one third;
- (b) for five or more years and where the claimant party was working, one-half,

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of the property acquired during the marriage, but the judge in his discretion, may, for good and sufficient reason, vary such awards.

(10) For the purposes of this section and section 6A any reference to

(a) a wife shall include a reference to a single woman living together with a single man in a common law union;

(b) a husband shall include a reference to a single man living together with a single woman in a common law union;

Provided that only one such union shall be considered for any benefit.

(11) For the purposes of subsection (10) any reference to a single woman or a single man shall include a reference to a widow or widower or to a woman or man who is divorced as the case may be:".

EXPLANATORY MEMORANDUM

Clause 2 of the Bill seeks to insert a new section 6A in the Married Persons (Property) Act, Cap.45:04, to provide that in any question as to the right of either spouse to money saved from housekeeping Allowance or property acquired out of the money, in the absence of agreement to the contrary, the money or property shall be treated as belonging to the husband and wife in equal shares. This section also applies to a single woman and a single man living together in a common law union. (See subsection 10 inserted by Clause 4 in section 15).

Clause 3 repeals and re-enacts section 10 of the Act. Section 10 as it stands deals with fraudulent investment with money of the husband. The new section 10 empowers the High Court to order any deposit or investment made by a spouse with the money of the other without the consent of the other to be transferred and paid to the other together with any dividends of such investment or deposit. It also expressly provides that the Act does not give validity as against the creditors of a person to any gift by that person to his or her spouse of any property where such property continues to be in the order or disposition of such person, or to any investment of moneys of such person made by or in the name of his or her spouse in fraud of his or her creditors.

Clause 4 seeks to amend section 15 of the Act.

Section 15 provides for the settlement in a summary way of questions between husband and wife as to property. But under this section as it stands an order could be made in any question as to the title to or possession of property only where one of the spouses still had the property in question, or, if it has been sold, the proceeds of sale thereof could be traced to an identifiable fund, the Court having no power to make a money judgment.

Clause 4 therefore renumbers section 15 as subsection (1) of section 15 and inserts ten new subsections, subsections (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11) in section 15. Subsection (2) gives the Court express power to order the sale of property. Subsections (3) to (6) give the Court power to order one spouse to pay to the other spouse a sum of money in compensation for the loss of an interest in property (whether or not he or she still had the property in his or her possession) to which that other spouse has been able to establish a title. Subsection (7) gives the Court power to conduct an inquiry with a view to finding out whether or not property existed. Subsection (9) gives the Court power in deciding questions between husband and wife as to property, to take into account the contribution made by a spouse in looking after the home and caring for the family. Subsection (10) applies section 15 to a single woman and a single man living together in a common law union.

J. S. Nassiah

Attorney General
and Minister of Legal Affairs.