

## **ACT 1991-07-04 NO. 47: THE MARRIAGE ACT**

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### **MAIN REGULATIONS**

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## **The Marriage Act**

### **Part I. Contraction and dissolution of marriage**

#### **Chapter I. Conditions for contracting a marriage**

##### **Section 1.** *Age for marriage*

No person under 18 years of age may contract a marriage without the consent of the persons or person having parental responsibility, and the permission of the county governor.

If one of the persons having parental responsibility lacks the capacity to act legally, or if consent cannot be obtained within a reasonable time, the consent of the other person is sufficient. If both persons are in this position, and a guardian has been appointed, the consent of the guardian is required.

The county governor may only give permission when there are special reasons for contracting a marriage.

If the persons or person having parental responsibility or the guardian refuses to consent, the county governor may nevertheless give permission if there is no reasonable ground for such refusal.

##### **Section 1 a.** *Voluntariness*

Women and men have the same right to choose a spouse freely. They shall contract the marriage of their own free will and by their own consent.

Added by the Act of 10 June 2005 No. 38 (in force from 1 July 2005 pursuant to the Decree of 10 June 2005 No. 527).

##### **Section 2.** *Right of persons who have been declared to be without legal capacity or for whom a provisional guardian has been appointed to contract a marriage*

Any person who has been declared to be without legal capacity must obtain the consent of his/her guardian to contract a marriage. The same applies to any person for whom a provisional guardian has been appointed pursuant to sections 90 a et seq. of the Guardianship Act, if it is part of the duties of the provisional guardian to give such consent. If consent is refused by the guardian or provisional guardian, the county governor may nevertheless give permission if there is no reasonable ground for such refusal.

##### **Section 3.** *Prohibition against marriage between close relatives*

Marriage may not be contracted between relatives in direct line of ascent or descent or between brothers and sisters.

With regard to adopted children, the above prohibition applies to both the natural relatives and the adoptive parents and their relatives. If the adopted child has been adopted anew, the county governor may however consent to a marriage between the adopted child and one of the original adoptive parents or a relative of the latter.

##### **Section 4.** *Prohibition against marriage when a previous marriage subsists*

No person may contract a marriage if a previous marriage or registered partnership subsists.

Amended by the Act of 30 April 1993 No. 40.

##### **Section 5.** *Obligation to provide information and seek counselling regarding a contagious disease that may be transmitted sexually*

No person suffering from a contagious disease that may be transmitted sexually may contract a marriage unless the other party has been informed of the disease and both parties have received oral counselling from a medical practitioner regarding the risks connected with the disease.

The statutory duty of professional secrecy shall not prevent a medical practitioner from giving information about the disease to a solemnizer of marriage or from being called as a witness in a matrimonial case.

**Section 5a.** *Lawful residence*

In order to contract a marriage in Norway, a foreign national must be lawfully resident in Norway.

Added by the Act of 24 June 1994 No. 24 (in force from 1 January 1995).

**Chapter 2. Verification of fulfilment of the conditions for marriage**

**Section 6.** *When verification shall take place, and who shall carry out such verification*

Before a marriage may be contracted, it shall be verified that the conditions for marriage have been fulfilled.

Verification shall be carried out by the national population registry or by a Norwegian foreign service official at the place of residence of one of the parties to the marriage, or if neither of them resides in Norway, at the place where one of them is staying. The Norwegian foreign service official shall only verify compliance with the conditions for marriage for Norwegian citizens who are permanently resident within his or her jurisdiction, and only in cases where verification cannot be carried out by the national population registry.

Amended by the Act of 19 December 2003 No. 119 (in force from 1 October 2004 pursuant to the Decree of 19 December 2003 No. 1762).

**Section 7.** *Evidence of fulfilment of the conditions for marriage*

For the purpose of verifying whether the conditions for marriage have been fulfilled, the parties to the marriage shall provide the following evidence:

- (a) Each of them shall present a birth certificate issued by the national population registry, when verification is not carried out by the said registry. If it is difficult to obtain such a certificate within a reasonable time, some other satisfactory proof of name and age may be accepted.
- (b) If either of the parties to the marriage is under 18 years of age, proof shall be presented that consent and permission for the marriage have been given pursuant to section 1.
- (c) If one of the parties to the marriage has been declared to be without legal capacity, proof shall be presented that consent or permission for the marriage has been given pursuant to section 2, first sentence, cf. third sentence. The same applies if a provisional guardian has been appointed for either of the parties to the marriage and the consent of the provisional guardian is required pursuant to section 2, second sentence.
- (d) Both of the parties to the marriage shall solemnly declare in writing that they are not as closely related as stated in section 3. In the case of marriage between an adopted child and one of the original adoptive parents or a relative of the latter, the parties to the marriage shall produce the consent of the county governor as stated in section 3, second paragraph, second sentence.
- (e) Each of the parties to the marriage shall solemnly declare in writing whether he or she has previously contracted a marriage or registered partnership. If so, evidence shall be

presented that the earlier marriage or the registered partnership has been terminated by death or divorce, or been dissolved pursuant to section 24.

Proof that the former spouse or registered partner is dead is as a rule presented in the form of a certificate issued by a domestic or foreign public authority. If such a certificate cannot be obtained, the parties may submit their information and evidence to the appropriate district court judge, cf. section 8, second cf. first paragraph, of the Probate Act. If administration of the estate does not come under the jurisdiction of a Norwegian district court, the issue may be brought before the district court judge at the place where fulfilment of the conditions for marriage is verified. The district court will by order decide whether the evidence shall be accepted. An interlocutory appeal against the order may be made by the party against whom the decision is made. If the evidence is accepted, the district court shall notify the county governor, who may make an interlocutory appeal against the order.

Proof that the marriage or the registered partnership has ended in divorce or been dissolved pursuant to section 24 may be given by presenting the licence or judgment duly certified to be final. The question whether a marriage may be contracted in Norway on the basis of a foreign divorce shall be decided by the Ministry pursuant to the provisions of section 4 of the Act of 2 June 1978 No. 38.

- (f) Each of the parties to the marriage shall solemnly declare in writing whether he or she is suffering from a contagious disease that may be transmitted sexually. If so, proof shall be presented that the other party has been informed of the disease, and that both parties have received counselling from a medical practitioner concerning the risks connected with the disease
- (g) Each of the parties to the marriage shall solemnly declare in writing whether he or she has or is expecting a child by any other person or has an adopted child. The duty to provide information does not apply in regard to children who have been given up for adoption.
- (h) A foreign national who is not permanently resident in Norway shall present documentary proof from the authorities in his/her home country stating that there is nothing to prevent him or her from contracting a marriage in Norway. The national population registry or a Norwegian foreign service official may make an exception from the requirement in the first sentence when there are special reasons for doing so. The Ministry will issue regulations concerning when a foreign national is to be considered permanently resident in Norway.
- (i) If either of the parties to the marriage has replied in the affirmative to questions mentioned in (e), (f) or (g), proof shall be presented that the other party has been informed of this.
- (j) Each of the parties to the marriage shall provide a sponsor who shall solemnly declare that he or she knows the said party, and shall state whether the said party has previously contracted a marriage or registered partnership and whether the parties to the marriage are related to each other as specified in section 3.

The sponsors must be of full age and legal capacity. In special cases the county governor may consent to the solemnization of marriage without sponsors, or with one sponsor only for both parties.

- (k) A foreign national who is to contract a marriage in Norway must present documentary proof to show that he or she is lawfully resident in Norway.
- (l) Each of the parties to the marriage shall individually solemnly declare that they are contracting the marriage of their own free will, and that they recognise each other's equal right to divorce.

Amended by the Acts of 30 April 1993 No. 40, 24 June 1994 No. 24 (in force from 1 January 1995), 30 August 2002 No. 67 (in force from 1 January 2003 pursuant to the Decree of 30 August 2002 No. 938), 4 July 2003 No.

72, and 19 December 2003 No. 119 (in force from 1 October 2004 pursuant to the Decree of 19 December 2003 No. 1762).

**Section 8.** *Verification of division of estate after a previous marriage*

Any person who has previously been married or been a party to a registered partnership must produce proof that the estate of the parties to the previous marriage or the registered partnership has been submitted to the district court for administration, or produce a declaration from the former spouse or former partner or heirs stating that the estate is being divided out of court.

This does not apply if a declaration is presented from the former spouse or partner stating that there were no assets in the marriage or the registered partnership to be divided, or from the heirs of the deceased spouse or partner stating that they consent to the surviving spouse or partner remaining in possession of the undivided estate.

If the previous marriage or registered partnership was dissolved in a way other than by death, and if more than two years have elapsed since it was dissolved, it is sufficient that the person who wishes to contract a new marriage states that the estate was divided, or that there was nothing to divide between the spouses or partners.

The declaration mentioned in the first paragraph cannot be made by a person who is under 18 years of age or who has been declared to be without legal capacity, unless the guardian has consented to division of the estate out of court pursuant to section 79 of the Probate Act.

The Ministry may grant exemption from compliance with the provisions of this section when there are special reasons for doing so.

Amended by the Acts of 30 April 1993 No. 40, and 30 August 2002 No. 67 (in force from 1 January 2003 pursuant to the Decree of 30 August 2002 No. 938).

**Section 9.** *Verification that the parties to the marriage have legal capacity*

If the solemnizer of marriage, the national population registry or a Norwegian foreign service official has reason to believe that, owing to a severe mental illness or severe mental disability, either of the parties to the marriage lacks legal capacity, production of a certificate from a public medical officer or from another medical practitioner designated by a public medical officer may be required. In this section legal capacity means the ability to have a normal understanding of what contracting a marriage entails and the ability to be normally motivated to contract a marriage.

Amended by the Act of 19 December 2003 No. 119 (in force from 1 October 2004 pursuant to the Decree of 19 December 2003 No. 1762).

**Section 10.** *Certificate stating that fulfilment of the conditions for marriage has been verified*

If the national population registry or a Norwegian foreign service official has found that the parties to the marriage fulfil the statutory conditions for marriage, and that there are no such obstacles as are mentioned in section 8 or section 9, the parties may be issued with a certificate stating that there is nothing to prevent the marriage from being contracted. The certificate is valid for four months from the date of issue.

Administrative decisions not to issue the said certificate may be appealed to the county governor.

Amended by the Act of 19 December 2003 No. 119 (in force from 1 October 2004 pursuant to the Decree of 19 December 2003 No. 1762).

**Chapter 3.** *Contracting a marriage – solemnization*

**Section 11.** *The solemnization procedure*

A marriage is contracted when the parties to the marriage come together before a solemnizer of marriage. While both parties are present, they shall declare that they wish to contract a marriage with each other. The solemnizer shall thereafter declare them to be married.

At least two witnesses shall be present during the solemnization.

### **Section 12.** *Solemnizers of marriage*

Solemnizers of marriage are:

- (a) a clergyman of the Church of Norway, or a priest or minister of a registered religious community, or a ceremonial leader or the like in a belief community that receives a grant pursuant to the Act of 12 June 1981 No. 64 on grants for belief communities if the King has approved the form of solemnization of marriage,
- (b) a notary public – also when acting outside his ordinary official district,
- (c) a Norwegian foreign service official, cf. section 17 of the Foreign Service Act
- (d) a specially authorised solemnizer of marriage appointed by the Ministry in cases where this is necessary owing to long distances or for other reasons. The appointment is made for four years at a time.

The Ministry may by regulations make supplementary provisions regarding the assignment and revocation of the right to solemnize marriages for a ceremonial leader or the like in a belief community.

Amended by the Acts of 3 May 2002 No. 13 (in force from 1 September 2002 pursuant to the Decree of 3 May 2002) and 19 December 2003 No. 119 (in force from 1 October 2004 pursuant to the Decree of 19 December 2003 No. 1762).

### **Section 13.** *Right of a solemnizer to refuse to solemnize a marriage*

A solemnizer as is specified in section 12 (a) may refuse to solemnize a marriage if one of the parties is not a member of his religious or belief community, or if neither of them belongs to his congregation.

A clerical solemnizer may also refuse to solemnize a marriage if one of the parties is divorced and the previous spouse is still living.

Amended by the Act of 19 December 2003 No. 119 (in force from 1 October 2004 pursuant to the Decree of 19 December 2003 No. 1762).

### **Section 14.** *Checking that fulfilment of the conditions for marriage has been verified*

Before the marriage is solemnized, the solemnizer shall receive a certificate from the national population registry or a Norwegian foreign service official stating that fulfilment of the conditions for marriage has been verified and that the provisions of sections 6 to 10 have been complied with.

A solemnizer who knows that a condition for contracting a marriage has not been fulfilled shall not perform a solemnization. If the solemnizer finds that there is reason to doubt whether a condition has been fulfilled, the solemnization may be postponed and the parties to the marriage ordered to produce proof that the condition has been fulfilled.

If a solemnizer refuses to solemnize a marriage for reasons other than those mentioned in section 13, second paragraph, each of the parties may appeal to the county governor, who may order the solemnizer to perform the solemnization.

Amended by the Act of 19 December 2003 No. 119 (in force from 1 October 2004 pursuant to the Decree of 19 December 2003 No. 1762).

### **Section 15.** *Further rules regarding the form of solemnization of marriage*

The King may make further rules regarding the form of solemnization of marriage.

### **Section 16.** *Invalidity*

No marriage shall have been contracted unless the provisions of section 11, first paragraph, cf. section 12, have been complied with. The same shall apply if the marriage was contracted without the presentation of a valid certificate verifying fulfilment of the conditions for marriage pursuant to section 10.

The King may however at the request of one of the parties approve a marriage as valid when there are special reasons for doing so. Such approval may also be given when one or both parties are deceased.

Each of the spouses may institute legal proceedings to have the marriage declared null and void if he or she has been forced to contract the marriage by unlawful conduct.

The right to institute legal proceedings lapses if no action is brought within six months after the spouse is no longer subject to coercion. In no case may legal proceedings be instituted more than five years after the marriage was contracted.

If a marriage has been solemnized despite the fact that one or both of the parties lacked legal capacity, legal proceedings to have the marriage declared null and void may be instituted within six months after the solemnization.

Section 28, first, cf. third, paragraph, shall apply correspondingly. A guardian may institute legal proceedings on behalf of a spouse who lacks legal capacity. The same applies to a provisional guardian who has been appointed pursuant to section 90 a et seq. of the Guardianship Act, if this is part of the duties of the provisional guardian.

Amended by the Act of 24 June 1994 No. 24 (in force from 1 January 1995) and 19 December 2003 No. 119 (in force from 1 October 2004 pursuant to the Decree of 19 December 2003 No. 1762).

**Section 16 a.** *The county governor's authority to institute legal proceedings regarding the validity of a marriage*

The county governor may institute legal proceedings to obtain a judgment as to whether or not a marriage subsists.

Added by the Act of 19 December 2003 No. 119 (in force from 1 October 2004 pursuant to the Decree of 19 December 2003 No. 1762).

**Section 17.** *Registration*

The King will make rules regarding the registration and notification of solemnization of marriages.

**Section 18.** *Disqualification of solemnizers of marriage*

Family relationship or other factors resulting in disqualification pursuant to section 6 of the Public Administration Act shall not prevent the solemnizer from solemnizing a marriage.

Amended by the Act of 19 December 2003 No. 119 (in force from 1 October 2004 pursuant to the Decree of 19 December 2003 No. 1762).

**Chapter 4. Dissolution of marriage. Separation.**

**Section 19.** *Dissolution of marriage*

A marriage may be dissolved by divorce after prior separation pursuant to section 21 or without prior separation pursuant to sections 22 and 23. A marriage may also be dissolved pursuant to section 24.

**Section 20.** *Separation*

A spouse who finds that he or she cannot continue cohabitation may demand a separation.

A separation ceases to have legal effect if the spouses continue or resume cohabitation. However, cohabitation for a transitional period until cohabitation is terminated, or brief attempts to resume cohabitation, will not have this effect.

**Section 21.** *Divorce after separation*

Each of the spouses may demand a divorce when they have been separated for at least one year.

**Section 22.** *Divorce after cohabitation is terminated*

Each of the spouses may demand a divorce if they have not cohabited for at least two years.

**Section 23.** *Divorce on grounds of abuse*

A spouse may demand a divorce if the other spouse has intentionally attempted to kill him or her or their children or wilfully exposed them to severe maltreatment. The same applies if the spouse has behaved in a manner that is likely to arouse grave fear of such conduct.

A demand for divorce pursuant to this section must be submitted within six months after the spouse learned of the act, and not later than two years after it took place.

**Section 24.** *Dissolution of a marriage contracted contrary to section 3 or section 4*

Each of the spouses may demand that the marriage be dissolved if it was contracted contrary to section 3 or section 4.

If neither of the spouses institutes proceedings, the county governor shall institute proceedings for dissolution of the marriage. If there are strong reasons for doing so, the county governor may nevertheless decide that no proceedings shall be instituted or that legal action shall be postponed,

A spouse may demand a divorce when the other spouse has contracted a new marriage contrary to section 4.

No demand for the dissolution of a new marriage contrary to section 4 may be made pursuant to the first or second paragraph if the previous marriage has been dissolved.

**Section 25.** *Entry into effect of separation and divorce*

A separation or divorce enters into effect on the day the licence is issued by the county governor or judgment is pronounced, unless otherwise specially provided.

A licence or judgment for divorce does not give persons the right to contract a new marriage until the licence has become final or the judgment becomes finally binding.

Amended by the Act of 17 June 2005 No. 90 (in force from the date decided by the King).

**Chapter 5. Hearing of cases regarding the dissolution of marriage and regarding separation**

**Section 25 a.** *Scope of application*

Added by the Act of 17 June 2005 No. 90 (in force from the date decided by the King).

**Section 26.** *Mediation, etc.*

Spouses who have children of their marriage under 16 years of age shall in separation and divorce cases pursuant to sections 20 and 22 attend mediation proceedings before the case is brought before a court or the county governor, cf. section 27. The purpose of the mediation is to reach an agreement concerning parental responsibility, right of access or where the child

or children shall permanently reside, with due emphasis on what will be the best arrangement for the child/children. Sections 52 to 54 of the Children Act shall apply correspondingly. The Ministry will by regulations make further provisions regarding who may undertake mediation pursuant to the first sentence, and regarding approval of such bodies.

Mediation pursuant to the first paragraph is not required if the case has already been brought before a court with a claim for divorce pursuant to section 23 or dissolution pursuant to section 24. Nor is mediation or information required when proceedings are instituted by a guardian pursuant to section 28, second paragraph.

The spouses are under an obligation to attend in person unless compelling reasons prevent them from doing so. When an attempt at mediation has been made, a certificate shall be issued to that effect. The Ministry will by regulations make further provisions regarding exemptions from the obligation to attend mediation proceedings. The Ministry will also make provisions regarding the terms on which a certificate stating that mediation has been attempted may be issued.

Any person who undertakes to mediate has an duty to maintain secrecy concerning what is revealed about personal matters in connection with such mediation. Sections 6, 7, 9 and 10 of the Act of 19 June 1997 No. 62 on Family Counselling Offices shall apply correspondingly.

The Ministry may make further provisions concerning the nature of the mediation, and concerning the summons thereto and procedures to be followed.

Amended by the Act of 20 June 2003 No. 40 (in force from 1 April 2004 pursuant to the Decree of 20 June 2003 No. 728).

#### **Section 26 a.** *Duty to provide information to the child welfare service*

Mediators whose work falls within the framework of this Act shall in their work be attentive to matters that may lead to measures being taken by the child welfare service.

Mediators shall on their own motion, notwithstanding their duty of professional secrecy, provide information to the child welfare service if there is reason to believe that a child is subjected to mistreatment at home or to other forms of serious neglect, cf. sections 4-10, 4-11, and 4-12 of the Child Welfare Services Act, or if a child has persistently displayed serious behavioural problems, cf. section 4-24 of the same Act. Mediators also have an duty to provide such information when so ordered by the bodies responsible for implementing the Child Welfare Services Act.

Added by the Act of 17 July 1992 No. 100.

#### **Section 27.** *Which authority will decide the case*

Separation and divorce are granted by the county governor unless otherwise prescribed by the second or third paragraph.

The decision shall be made by a court:

- (a) when the case concerns dissolution of a marriage pursuant to section 23 or section 24,
- (b) when the case concerns divorce pursuant to section 22, and the parties do not agree that the conditions have been fulfilled,
- (c) when proceedings for separation or divorce are instituted by the guardian or provisional guardian pursuant to section 28.

Separation pursuant to section 20 and divorce pursuant to section 22 shall also be decided by a court when the demand is made in proceedings for divorce that have been brought before the court on other grounds, or in connection with a case concerning a question pursuant to this Act or a question pursuant to the Children Act concerning children of the marriage which is related to the demand for separation or divorce.

#### **Section 28.** *Party rights for a spouse without legal capacity, etc.*

Proceedings for dissolution of a marriage or separation are instituted by or against a spouse personally even if he or she lacks legal capacity. When proceedings are instituted, the guardian may assist the person lacking legal capacity. The guardian shall be notified about the case by the county governor. If the case is brought before the courts, the writ shall also be served on the guardian.

A guardian may bring proceedings for dissolution of a marriage or separation on behalf of a spouse who lacks active legal capacity if this is essential in the interests of the said spouse. These cases are dealt with in any event by the courts, which will also decide whether there are grounds for legal action.

If a provisional guardian has been appointed for a legally competent spouse pursuant to sections 90 a et seq. of the Guardianship Act, and it is part of the duties of the provisional guardian to act in or to bring proceedings for separation and divorce, the provisions in the first and second paragraphs shall apply correspondingly to the provisional guardian.  
Amended by the Act of 17 June 2005 No. 90 (in force from the time decided by the King).

**Section 29.** *Procedure to be followed by the county governor, etc.*

When a petition for separation or divorce is received by the county governor, the parties may be summoned to appear in person if the county governor believes this to be appropriate.

The Ministry will issue further regulations regarding the information to be required by the county governor before a separation or divorce is granted.

Notice of the administrative decision of the county governor regarding separation pursuant to section 20 and divorce pursuant to section 21 and section 22, cf. section 27, shall be served on the parties unless they have waived notification. The time limit for appealing against the decision is three weeks, and it runs for each of the parties from the time notice of the decision is served on him or her. The parties may in advance waive their right to appeal against the decision. As regards notification and an appeal against the decision of the county governor, the provisions of the Public Administration Act shall otherwise apply.

If one of the parties dies during the case, section 425 of the Civil Procedure Act applies correspondingly as regards appealing against the decisions of the county governor.  
Amended by the Act of 17 June 2005 No. 90 (in force from the time decided by the King).

**Section 30.** *Invalidity*

Once an administrative decision regarding separation and divorce has become final, no claim may be made that the decision is invalid because of a procedural error or for other reasons.

Amended by the Act of 17 June 2005 No. 90 (in force from the time decided by the King).

**Section 30 a.** *The county governor's power to act in order to safeguard public interests*

Added by the Act of 17 June 2005 No. 90 (in force from the time decided by the King).

**Section 30 b.** *When matrimonial proceedings may be instituted in Norway*

Added by the Act of 17 June 2005 No. 90 (in force from the time decided by the King).

**Section 30 c.** *Venue*

Added by the Act of 17 June 2005 No. 90 (in force from the time decided by the King).

**Section 30 d.** *Inclusion of other claims in matrimonial proceedings*

Added by the Act of 17 June 2005 No. 90 (in force from the time decided by the King).

**Section 30 e.** *Legal force, reopening of a default judgment and reopening of a case*

Added by the Act of 17 June 2005 No. 90 (in force from the time decided by the King).

**Section 30 f.** *One of the parties dies. The right of children and heirs to become parties to the case.*

Added by the Act of 17 June 2005 No. 90 (in force from the time decided by the King).

## **Part II. The property relationship between spouses**

### **Chapter 6. The right of the spouses to dispose of items of property, etc.**

#### **Section 31.** *General rule regarding spouses' right of disposal*

Marriage entails no limitation of the right of a spouse to dispose of what he or she owns when the marriage is contracted or later acquires, unless it is otherwise provided.

Items of property that are acquired by both spouses become their common property. Act of 18 June 1965 No. 6 relating to community of property applies to such items of property unless it is otherwise provided or is a consequence of the special relationship between spouses.

In assessing who has acquired items of property that have been used by the spouses in common and personally, such as a common residence or ordinary household goods, due consideration shall be given to the work of a spouse in the home.

#### **Section 32.** *Right to dispose of common residence*

A spouse may not without the written consent of the other spouse:

- a. assign, mortgage, lease out, or enter into or terminate a lease or sublease agreement for a property that is used as a common residence;
- b. assign or mortgage a part, share or bond to which the right to lease a common residence is attached.

If consent is refused or cannot be obtained within a reasonable time, the spouse or the other party to the agreement may demand that the district court decide the question whether the transaction is to be permitted. Permission shall be given if the court finds that there is no reasonable ground for the other spouse to refuse consent. The decision will be made by a court order. The provisions of the fourth chapter of the Probate Act shall apply correspondingly.

Amended by the Act of 30 August 2002 No. 67 (in force from 1 January 2003 pursuant to the Decree of 30 August 2002 No. 938).

#### **Section 33.** *Right to dispose of ordinary household goods, etc.*

A spouse may not without the consent of the other spouse assign, lease out or mortgage ordinary household goods in the common home or objects specified for use by the children.

The provision in section 32, second paragraph, applies correspondingly.

#### **Section 34.** *Duration of limitations on the right of disposal in the event of separation or divorce*

Until a decision has been made as to what is to be done with each individual item of property or right in the settlement between the spouses, the provisions of this chapter shall apply also after separation and divorce.

If the items of property are separate property, the provisions shall apply until the spouses are separated or divorced.

#### **Section 35.** *Rescission of unlawful transactions*

If a spouse has acted contrary to section 32 or section 33, the other spouse may demand that the agreement be rescinded by a court judgment. An agreement that is covered by section 33 may not however be rescinded if the other party at the time of delivery had reasonable grounds to believe that the spouse had the right to contract the agreement.

Proceedings must be instituted within six months after the spouse learned of the agreement, and not later than one year after judicial registration of title if the agreement concerns real property, or after delivery if it concerns other items of property.

**Section 36.** *Transfer of co-ownership shares of items of common property*

When items of property covered by section 32 or section 33 are the common property of the spouses, the provisions of this chapter shall apply correspondingly to the share of a spouse in the common property.

If a spouse transfers his/her co-ownership share of items of property that have been used in common and personally, the other spouse has the right to redeem the share at the probate valuation. The same applies when a spouse has demanded that the community of property be dissolved. A claim for redemption must be submitted without undue delay and not later than six weeks after the spouse has received such notification as is specified in section 11, fourth paragraph, first sentence, of the Community of Property Act. The demand for probate valuation must be made within the same time limit. When the final valuation is known, the spouse must within two weeks offer to make a settlement in the manner prescribed in section 11, fourth paragraph, second sentence, of the Community of Property Act.

**Section 37.** *Limitations on the freedom to enter into agreements, etc.*

The restrictions on the right of disposal laid down in this chapter may as a general rule not be deviated from by an agreement between the spouses. The spouses may however agree that the restrictions shall not apply to items of property which pursuant to the provisions of chapter 9 are separate property. Such an agreement must be contracted in the form of a marriage settlement.

**Chapter 7. The mutual duty of the spouses to provide support, etc.**

**Section 38.** *Joint responsibility of spouses to support the family*

Spouses are jointly responsible for the expenses and the work required to maintain the joint household and to cover other joint needs, the upbringing of their children and the particular needs of each spouse. The spouses shall contribute by providing money, by working in the home or in some other way.

A spouse may to a reasonable extent demand money from the other spouse to cover such expenses as are mentioned in the first paragraph. A spouse who does not meet his/her obligation to place the necessary funds at the disposal of the other may be ordered to pay specific amounts. Sections 81, second paragraph, 83, 84, 85, second paragraph, 92 and 93 shall apply correspondingly in so far as they are appropriate.

**Section 39.** *Obligation to provide information regarding financial matters*

Spouses are under an obligation to give each other the information necessary to assess their financial position. For this purpose a spouse may demand that the other spouse and the tax assessment authorities provide information regarding or a copy of the joint tax return and tax assessment or the tax return and tax assessment of the other spouse. A spouse may also demand information from companies, enterprises or other institutions engaged in financing or insurance activities, and from others who manage funds.

## **Chapter 8. Liability of spouses for debts**

### **Section 40.** *General rule regarding the liability of spouses for debts*

A spouse may not contract a debt which affects the other spouse unless this is specially authorized.

### **Section 41.** *Right in certain cases to enter into agreements involving the liability of both spouses*

During cohabitation a spouse may on the liability of both spouses enter into ordinary agreements regarding the daily housekeeping and the upbringing of their children and ordinary agreements to cover the necessary requirements of the individual spouse. This also applies to the leasing of a common residence. Such agreements are considered to be entered into on the liability of both spouses unless otherwise indicated by the circumstances.

If the other party understood or should have understood that the agreement exceeded the right of the spouse pursuant to the first paragraph, only the said spouse shall incur liability.

## **Chapter 9. Agreements regarding property arrangements, etc.**

### **Section 42.** *Agreement regarding exemption from division (separate property)*

Spouses may by means of a marriage settlement agree that what they own or later acquire shall be exempted from division (separate property). Such an agreement may also be entered into in view of a prospective marriage.

The agreement may be limited to apply to the assets of one of the spouses or parts of the assets of one or both of the spouses. The agreement may also be made for a limited period of time or conditional on the spouses not having heirs of their bodies from their marriage.

Spouses may by means of a marriage settlement agree that separate property shall not apply in the case of a settlement after the death of one of the spouses. Such an agreement may be limited to applying only if a particular spouse dies first. The surviving spouse may choose to ignore such limitations as are mentioned in the first and second sentences unless it is otherwise agreed or clearly stipulated.

### **Section 43.** *Right to remain in undivided possession of assets that are separate property*

Spouses may by means of a marriage settlement agree that the survivor shall have the right to remain in undivided possession of separate property, or of parts of separate property, cf. section 42.

If the surviving spouse makes use of the right to remain in undivided possession pursuant to this section, his or her own assets which are separate property shall also be included in the undivided property unless it is otherwise agreed in a marriage settlement.

If the estate ceases to remain undivided, the division shall take place pursuant to the provisions of section 26, second paragraph, of the Inheritance Act if the marriage settlement does not provide for a more equal distribution of the assets.

Agreements pursuant to the first to third paragraphs may be limited to apply only if a particular spouse dies first.

### **Section 44.** *Agreement regarding exemption from section 59 relating to unequal division*

Spouses may by means of a marriage settlement agree that the provisions regarding unequal division in section 59, first and/or third paragraph, shall not apply in the event of a later settlement of the estate.

The agreement may be limited to applying to the assets of one spouse or parts of the assets of one or both spouses. The agreement may also be made conditional on settlement taking place after a specific period of time or on the spouses having heirs of their bodies from their marriage.

The agreement may also be limited to applying in the event of settlement after the death of one of the spouses or of a particular spouse.

**Section 45.** *Agreement regarding division of community property*

Spouses may by means of a marriage settlement agree that their community property shall be divided.

**Section 46.** *Cancellation and modification of agreements*

Agreements between spouses pursuant to the provisions of sections 42 to 44 may be cancelled or altered by means of a new marriage settlement.

An agreement between spouses pursuant to the provisions of sections 42 to 44 may be wholly or partly annulled if it will affect one of the spouses unfairly. Instead of annulling the agreement, the court may decide that the spouse who is placed in an unfairly adverse position is to be awarded a sum from the other spouse. If both spouses have completely separate property, a claim for modification must be submitted within three years after the spouses were divorced. If one or both of the spouses have items of property that are also community property, claims must be submitted before the division is concluded.

**Section 47.** *Persons who have been declared to be without legal capacity, or for whom a provisional guardian has been appointed*

A spouse who is without legal capacity must have the consent of a guardian in order to enter into agreements in accordance with the provisions of sections 42 to 46. The same applies to a legally competent spouse for whom a provisional guardian has been appointed pursuant to sections 90 a et seq. of the Guardianship Act, if it is part of the duties of the provisional guardian to give such consent.

**Section 48.** *Provision by donor or testator*

A donor or testator may provide that the legacy or gift shall be conditional on such an arrangement as is mentioned in sections 42 to 44. For a legacy this must be provided by a will. The beneficiary may not alter such provisions unless this has been specially authorized or clearly stipulated by the donor or testator.

**Section 49.** *Substitution of and income from assets that are separate property*

Anything that is substituted for property that is separate property becomes separate property unless otherwise provided by the spouses by means of a marriage settlement, or stipulated by the donor or testator. The same applies to any income from such property.

**Chapter 10. Gifts between spouses**

**Section 50.** *Gifts*

Gifts between spouses must be made by means of a marriage settlement in order to be valid. However, this does not apply to gifts that must be considered customary, nor to gifts

consisting of a pension, life insurance, an annuity, a private pension to the former owner of a ceded estate, or similar benefits which provide security for the other spouse.

No valid agreement may be made that any future acquisition by a spouse shall accrue to the other without compensation. However, such an agreement may be entered into regarding ordinary household goods in the common home.

The provisions of this section shall also apply to gifts which are to be made after the marriage has been contracted.

**Section 51.** *Claims of earlier creditors against the recipient of a gift in certain cases*

If one spouse has given the other a gift, any person who at the time had a claim against the donor, and who cannot recover the claim in full from him or her, may look to the other spouse for the value of what was transferred. However, this does not apply if it is proved beyond a doubt that the donor was still solvent. If compensation has been paid, it shall be deducted when calculating the value of what has been transferred.

Any claim of the creditor against a bona fide recipient of a gift shall be limited to the gain accruing to the recipient through the gift. No demand may be made for the transfer of profits which the recipient of a gift has gained in good faith before the institution of legal proceedings to enforce the claim.

The provisions regarding modification of liability in section 5-12, second paragraph, of the Satisfaction of Claims Act shall apply correspondingly.

**Section 52.** *Renunciation of share*

If when the assets are divided, a spouse has renounced any share of which he or she disposes, and which shall not by law accrue to the other spouse, any person who at that time had a claim against the spouse and who cannot recover the claim in full from him or her may look to the other spouse for the value of what the latter has received in excess. However, this does not apply if it is proved beyond a doubt that the spouse who made the renunciation was still solvent. If compensation has been paid, this shall be deducted when calculating the value of what has been transferred. The provisions of section 51, second and third paragraphs, shall apply correspondingly.

**Section 53.** *Insolvency proceedings against the donor*

If the estate of a spouse who has made a gift or renounced a share that is at his/her disposal at the time of settlement becomes the subject of public insolvency proceedings, the provisions of sections 51 and 52 shall apply only when the estate does not wish to annul the gift or renunciation.

**Chapter 11. Marriage settlements**

**Section 54.** *Forms of marriage settlement*

A marriage settlement must be contracted in writing. The spouses must at the same time in the presence of two witnesses who have been approved by both spouses, and who are present together and know that a marriage settlement is to be contracted, sign the marriage settlement or acknowledge their previous signatures. The witnesses shall also sign the marriage settlement in the presence of the spouses. If the marriage settlement is to the advantage of one of the spouses only, it is valid even if the said spouse has not taken part in entering into the marriage settlement. If the consent of a guardian is required for a spouse who is without legal capacity, or the consent of a provisional guardian for a spouse with legal capacity, the said consent must be given in the same way.

The witnesses must be legally competent and in full possession of all of their faculties.  
A marriage settlement that satisfies the requirements of this provision is binding on the spouses themselves and on their heirs.

**Section 55.** *Judicial registration*

In order that the marriage settlement shall be legally protected from the creditors of the spouses, it must be judicially registered in the Register of Marriage Settlements at the Registry Office in Brønnøysund.

A marriage settlement which transfers real property from one spouse to the other must furthermore be judicially registered by the registrar for judicial registration of title to real property pursuant to the general rules. The same applies to other items of property the assignment of which requires judicial registration or other registration in order to obtain legal protection.

Amended by the Act of 12 September 2003 No. 93 (in force from 1 January 2004 pursuant to the Decree of 12 September 2003 No. 1136).

**Chapter 12. Division of assets in the event of separation, divorce, etc.**

**Section 56.** *The applicability of this chapter*

If the spouses are in a position specified in section 57, the assets shall be divided between them pursuant to the provisions of this chapter unless otherwise prescribed by statute, an agreement between the spouses or a stipulation by a donor or testator.

**Section 57.** *When division shall take place*

A spouse may demand division of the total assets of the spouses which are community property in the following cases:

- (a) When a licence has been granted or judgment pronounced for separation or divorce.
- (b) When the spouses have agreed in a marriage settlement that division shall take place.
- (c) If the other spouse has so mismanaged his/her financial affairs as to entail a serious risk that the family will lose the family home. If the spouse is without legal capacity, the guardian must consent. The claim shall be decided by an order of the district court under whose jurisdiction the division comes. The order is appellable. Otherwise the provisions for the hearing of disputes arising from the administration of estates shall apply in so far as they are appropriate. An order concerning division shall be judicially registered pursuant to the provision for marriage settlements.
- (d) When there is a final and binding judgment that the marriage is invalid.
- (e) When there is a final and binding judgment that the marriage shall be dissolved pursuant to section 24, first or second paragraph.

If a spouse has died after the conditions for demanding division pursuant to (a) or (b) are fulfilled, or after there is a final decision pursuant to (c), (d) or (e), the heirs of the spouse may demand that the division be carried out. In such cases a creditor of the spouse may also demand that the division be carried out if this is necessary in order that he or she shall receive payment.

Amended by the Act of 30 August 2002 No. 67 (in force from 1 January 2003 pursuant to the Decree of 30 August 2002 No. 938).

**Section 58.** *Equal division and deduction of debts*

The total assets of the spouses shall initially be divided equally after deductions have been made for debts pursuant to the second and third paragraphs (community property). If the

spouses are jointly liable for debts, each of them may deduct the share for which he or she is liable in accordance with the relationship between the spouses.

A spouse who only has assets that are community property, and who does not withhold means from the division pursuant to section 59, may deduct in full from his/her share the debt he or she owes.

A spouse who has separate property, or who withholds means from the division pursuant to section 59, may make the following deductions for debts from assets that are community property:

- (a) A full deduction may be claimed for debts that the spouse has incurred through the acquisition of or expenditure on items of property which are community property, unless otherwise prescribed by (b).
- (b) A deduction for debts that the spouse has incurred through the acquisition of or expenditure on items of property which are separate property or assets which are withheld from the division pursuant to section 59, may only be claimed when the total value of the separate property and the means to be divided unequally are not sufficient to cover the debts. The same applies to debts that the spouse has incurred through the acquisition of or expenditure on items of property which are exempted from division pursuant to section 61 (b) or (c), or through improper conduct towards the other spouse.
- (c) Deductions may be claimed for a proportionate share of other debts.

**Section 59.** *Unequal division*

A claim may be made to withhold from the division the value of assets that can clearly be traced back to means that one spouse had at the time the marriage was contracted or has later acquired by inheritance or by a gift from a person other than his/her spouse.

If the right to withhold means pursuant to the first paragraph will lead to an obviously unfair result, it may lapse entirely or partly. In considering the matter, particular importance shall be attached to the duration of the marriage and the efforts of the spouses on behalf of the family.

If there are strong reasons for doing so, a spouse may be awarded the right to withhold from the division all or part of the value of the community property that is not covered by the first paragraph.

If the spouses have resumed cohabitation after separation, and division has taken place, the assets they have from the earlier settlement shall be treated on a par with means specified in the first and second paragraphs if the means of the spouses are to be divided once again.

**Section 60.** *Cut-off date for acquisitions, income and debts that are covered by the settlement*

Division is to be made of the assets each spouse had

- (a) when a petition for separation or divorce was received by the county governor or a writ demanding separation or divorce was received by the court, or when cohabitation ceased if this took place first,
- (b) when the spouses agreed to division pursuant to section 57 (b)
- (c) when a demand for division pursuant to section 57 (c), was received by the court, or
- (d) when a writ with a demand specified in section 57, first paragraph, (d) or (e), was received by the court.

Income from means owned wholly or partly by a spouse which is earned after the cut-off dates mentioned in the first paragraph, (a) to (d), shall not be divided.

A spouse may not claim a deduction for debts he or she has incurred after the cut-off dates mentioned in the first paragraph, (a) to (d).

Amended by the Act of 30 August 2002 No. 67 (in force from 1 January 2003 pursuant to the Decree of 30 August 2002 No. 938).

**Section 61.** *Special exemptions from the division*

A spouse may withhold the following items of property from the division:

- (a) Items of property for the exclusive personal use of the spouse, if it would not be obviously unfair to withhold the said items from the division. A spouse may on the same condition withhold family photographs and family papers which derive from his or her relatives.
- (b) Rights to national insurance benefits, public or private pension schemes, and claims arising from an annuity or life insurance which has no surrender value that may be realized by the spouse or the spouses jointly. If the fact that a spouse withholds assets causes the other spouse to be placed in an unfairly adverse position, the latter may be awarded a sum to prevent this. When assessing whether compensation shall be awarded, importance shall be attached, *inter alia* to whether the marriage has lasted for a long time. It may be decided that the sum shall be paid in instalments.
- (c) Other items of property or rights which cannot be assigned and which are of a personal nature. If the fact that one spouse withholds assets causes the other spouse to be placed in an unfairly adverse position, the latter may be awarded a sum to prevent this. When assessing whether compensation shall be awarded, importance shall be attached, *inter alia* to whether the marriage has lasted for a long time. It may be decided that the sum shall be paid in instalments.
- (d) The intact value of compensation, national insurance or insurance which covers loss of future income and expenses which a personal injury may be assumed to cause an injured person in the future, as well as the intact value of compensation for persistent injury, industrial injury insurance and redress. Disbursements from an employer in connection with discharge or early retirement may be withheld on the same conditions. If it is due to the efforts of the other spouse that the benefits have not been expended, the amount that may be withheld from the division shall be reduced to an extent that is fair when the value of the efforts of the other spouse is taken into account.
- (e) Items of property that have been acquired especially for use by the children. The spouse who is awarded responsibility for the daily care of the children may demand that such items of property be withheld.

Amended by Act of 5 June 1998 No. 34 (entry into force 1 July 1998 pursuant to Decree of 5 June 1998 No. 570, so that the rule regarding compensation in (b), second to fourth sentences, does not apply when the cut-off date pursuant to section 60 falls prior to the entry into force of the amendment act.

**Section 62.** *Right to household goods in special cases*

When there are special reasons for doing so, a spouse may be awarded the right to take over ordinary household goods even if the value exceeds what he or she could otherwise demand under the settlement. The right of a spouse pursuant to this section shall if necessary be overridden by the right of the other spouse to retain funds for the payment of debts.

**Section 63.** *Other special deviations from the rule of equal division – claims for compensation*

If a spouse has used community means to increase the value of means that are separate property, or to acquire items of property or rights that are exempted from division pursuant to section 61 (c), the other spouse may claim compensation. The same applies to the acquisition

of rights specified in section 61 (b), in so far as the expenses exceed what must be considered reasonable.

Compensation may also be claimed when a spouse has in an improper manner significantly diminished the basic estate to be divided.

Claims pursuant to the first and second paragraphs may only be pursued in so far as the means of the spouse are not required for the payment of debts.

A claim for compensation which cannot be paid at the time of settlement may not be pursued at a later date.

When a sum is awarded pursuant to this section, it may be decided that it shall be paid in instalments.

**Section 64.** *Debts for which both spouses are liable*

If the spouses have debts for which both are liable, each of them may demand that the portion of the debt that is to be borne by the other spouse be paid before the division of the property. If the debt has not fallen due, each of the spouses may demand that the other spouse set aside means from the assets which he or she owns to cover his/her share of the debt, or provide adequate security. If sufficient means are not set aside or security provided as mentioned in the second sentence, it may be demanded that the excess amount be secured by what accrues to the other spouse under the settlement.

**Section 65.** *Freedom to enter into agreements under the settlement*

The provisions of this Act do not prevent the spouses from entering into an agreement regarding the settlement. An agreement may however be wholly or partly annulled if it will have an unfair effect for one of the parties. Instead of annulling the agreement, the court may decide that the spouse who is placed in an unfairly adverse position is to be awarded a sum from the other spouse.

Proceedings pursuant to the second and third sentences of the first paragraph must be brought not later than three years after the agreement was entered into.

**Chapter 13. Right to individual items of property, etc. at the time of the division, right to use residence, etc.**

**Section 66.** *Right to retain own items of property*

When the spouses are to divide assets pursuant to chapter 12, each of them has the right to retain items of property or rights which he or she owns fully or to all intents and purposes, unless this would be obviously unfair under the circumstances.

A spouse may always demand to take over property which he or she will be able to redeem by allodial right.

**Section 67.** *Special provisions regarding common residence and household goods*

When there are special reasons for doing so, a spouse may, regardless of previous ownership, demand to take over:

- (a) real property or a share of real property that has served exclusively or primarily as a common residence, unless the other spouse has an allodial right to the property, or it was acquired from his or her family by inheritance or gift,
- (b) a part or a share in a housing society or a bond to which the right of the spouses to lease their common residence has been attached,
- (c) a lease entitling them to the common residence, or
- (d) ordinary household goods in the common home.

In considering the matter, importance shall be attached to the needs of the spouses and their children.

**Section 68.** *Right to use the residence*

When there are special reasons for doing so, a spouse may be awarded the right to use a residence that is to be wholly or partly taken over by the other spouse. In considering the matter, importance shall be attached to the needs of the spouses and their children. It may be decided that the right of use shall be awarded for a limited period of time. The right of use lapses when consideration for the needs of the spouses or the children no longer renders such a right reasonable.

The spouse who owns the residence may demand to be paid rent at the ordinary market rate. If the residence is part of the common property of the spouses, the rent shall be reduced proportionately. Rent begins to run from the time a demand for such rent is presented.

**Section 69.** *Valuation*

If the spouses do not agree on the value of items of property that the individual spouse shall retain pursuant to section 66 or take over pursuant to section 67, the value shall be determined by means of a probate valuation. The valuation shall correspond to the market value of the items of property unless otherwise specially provided.

When a spouse retains items of property that are wholly owned by him or her, the valuation shall be based on the value at the time stated in section 60. In other cases the valuation in a public administration of the estate shall be based on the value at the time of distribution, and in an administration of the estate out of court on the value at the time it was decided who should take over the item of property.

**Section 70.** *The value of the items of property exceeds the share to which a spouse is entitled*

If the value of the items of property that a spouse takes over exceeds the share to which the said spouse is entitled, he or she shall pay the other spouse the excess amount.

If, pursuant to section 66 or section 67, a spouse takes over real property or a part of real property, a part or a share in a housing society, or a bond to which the right of the spouses to lease the common residence has been attached, the other spouse must be satisfied with a claim secured by a charge on the property or the right. The claim may be terminated by both parties on six months' notice. The King will determine the interest rate that shall be applied.

If a spouse is given the right to use the property of the other spouse, the claim may not be terminated by the spouse entitled to the right of use while the right of use is effective.

If it is reasonable under the circumstances, the spouse who has a claim against the other spouse pursuant to the first paragraph may be awarded interest. Such interest may at the earliest be calculated as due from two years after the dates mentioned in section 60. The interest shall correspond to the interest rate determined by the King pursuant to the second paragraph.

**Section 71.** *Sale of items of property of the spouses*

Each of the spouses may demand that items of property that are not taken over by them be sold. Private letters and other items of property of which the sale to strangers would be objectionable may not be sold to a third party.

If the settlement takes place in a district court, the court will decide how the sale shall take place if the spouses do not reach agreement on this. The court may decide that sale shall take place only between the spouses. The court may also decide that the sale shall take place

through the enforcement authorities pursuant to the provisions regarding forced sale in so far as they are appropriate.

If the settlement takes place out of court, each of the spouses may demand that the sale shall take place through the enforcement authorities pursuant to the provisions regarding forced sale in so far as they are appropriate unless they agree on another manner of sale. Commercial products and officially quoted securities shall be sold in the manner that is customary for such items of property.

Outstanding claims may only be sold when collection of the debt will take a particularly long time or entail some other serious disadvantage.

In the case of sale each of the spouses has a right of pre-emption on otherwise equal terms.

Amended by the Acts of 8 January 1993 No. 20 and 30 August 2002 No. 67 (in force from 1 January 2003 pursuant to the Decree of 30 August 2002 No. 938).

### **Section 72.** *The right of creditors to payment*

The fact that the assets of the spouses are to be divided has no effect on the right of creditors to recover their claim against a spouse. However, no items of property that are to be divided may be attached in order to pay a debt that a spouse has incurred after the dates mentioned in section 60.

## **Chapter 14. Special provisions for items of property that are separate property.**

### **Section 73.** *Compensation to a spouse who has been instrumental in increasing the means of the other spouse that are separate property*

If a spouse by contributing to the support of the family, by working or in some other way has significantly helped to increase means that are the separate property of the other spouse, he or she may be awarded compensation from the other spouse.

### **Section 74.** *Right to residence and household goods*

When there are strong reasons for doing so, a spouse may be granted the right to redeem a residence and such household goods as are mentioned in section 67 when they are the separate property of the other spouse. The provisions of section 69, first and second paragraphs, second sentence, and section 70, second and fourth paragraphs, shall apply correspondingly.

When there are special reasons for doing so, a spouse may be granted the right to use a residence which is the separate property of the other spouse. The provisions of section 68, first paragraph, second to fourth sentences, and second paragraph, shall apply correspondingly.

### **Section 75.** *Time limits for claims pursuant to this chapter*

If both spouses have completely separate property, claims pursuant to this chapter must be submitted within one year after the spouses were divorced. If one or both spouses also have items of property that are community property, claims must be submitted before the division has been concluded.

## **Chapter 15. Settlement upon the death of one of the spouses**

### **Section 76.** *When division shall take place*

When one of the spouses has died, the assets of the spouses shall be divided between the surviving spouse and the heirs of the deceased pursuant to the provisions of this chapter, unless the surviving spouse makes use of the right to remain in possession of the undivided estate or unless otherwise prescribed by statute, a will, an agreement between the spouses or any provision of a donor or testator. Division may be demanded by the surviving spouse and by the heirs of the deceased.

**Section 77.** *Relationship between the surviving spouse and heirs of the deceased*

When the assets of the spouses are to be divided between the surviving spouse and heirs of the deceased, the provisions of chapter 12 and section 46, second paragraph, and section 72 shall apply correspondingly. Unequal division pursuant to section 59 may not however be demanded upon distribution of an undivided estate.

Nor may the heirs of the spouse who died first demand:

- (a) the withdrawal of their share in advance pursuant to section 61, (a), (c) and (d),
- (b) compensation pursuant to section 63, or
- (c) modification pursuant to section 46, second paragraph, or section 65.

To other matters concerning the relationship between the surviving spouse and the heirs of the deceased, the provisions of the Probate Act and the Inheritance Act shall apply.

**Section 78.** *Cut-off date for acquisitions and debts*

Legal consequences specified in section 60 take effect from the death of the spouse if they have not already taken effect pursuant to section 60, first paragraph. If the surviving spouse remains in possession of the undivided estate, the legal consequences take effect from the date division is requested.

**Part III. Maintenance and pension after separation and divorce**

**Chapter 16. Right to maintenance and spouse's pension**

**Section 79.** *Right to maintenance after separation, divorce or other cessation of cohabitation*

The mutual obligations of spouses pursuant to section 38 cease to exist upon separation and divorce. The same applies to a cessation of cohabitation without a separation or divorce.

If the ability and opportunity of a spouse to ensure adequate support have been reduced as a result of caring for children of the marriage or of the distribution of joint tasks during cohabitation, the other spouse may be ordered to pay maintenance.

In other cases maintenance may only be ordered if there are special reasons for doing so.

**Section 80.** *Assessment of maintenance*

Maintenance shall be assessed on the basis of the need for maintenance of the person entitled thereto and the ability to pay of the person liable to pay maintenance.

When there are special reasons for doing so, maintenance may be determined as a lump sum payment, alone or in addition to regular payments.

**Section 81.** *Duration of maintenance*

Maintenance shall be determined for a limited period not exceeding three years. If there are special reasons, maintenance may be determined for a longer period of time or

without any time limit. If the marriage has lasted for a long time, maintenance shall as a general rule be determined for a longer period of time or without any time limit.

Maintenance may be ordered for a period of up to three years before the claim was submitted to the authority that is to decide the matter.

Amended by the Act of 5 June 1998 No. 34 (in force from 1 July 1998 pursuant to the Decree of 5 June 1998 No. 570).

**Section 82.** *Cessation of maintenance*

The right to maintenance lapses if the person entitled thereto remarries.

**Section 83.** *Determination of maintenance*

The parties may enter into an agreement regarding maintenance. If the parties do not agree on the question of maintenance, each of them may demand that it be decided by the courts. If both parties so desire, the question may instead be decided by the maintenance enforcement officer. Administrative decisions of the maintenance enforcement officer may be appealed to the body immediately superior to him or to the body decided on by the Directorate of Labour and Welfare. The parties may demand a decision on the question of maintenance even if they have previously entered into an agreement regarding this question.

Amended by the Act of 11 June 1993 No. 69 and the Act of 16 June 2006 No. 20 (in force from 1 July 2006 pursuant to the Decree of 16 June 2006 No. 631).

**Section 84.** *Alteration of maintenance determined*

Each of the parties may demand that the maintenance determined by the maintenance enforcement officer or the court be altered or revoked if there are special reasons for doing so. When strong reasons so warrant, the decision may also apply to maintenance that fell due before the demand for alteration was submitted. The provisions of section 74, third paragraph, of the Children Act shall apply correspondingly. Each of the parties may demand that the demand for alteration be decided by the maintenance enforcement officer if the maintenance was determined by the maintenance enforcement officer. If both parties so desire, the demand for alteration shall be decided by the court. If the maintenance was determined by a court, section 83, second and third sentences, shall apply.

Amended by the Acts of 11 June 1993 No. 69, 24 June 1994 No. 24 (in force from 1 January 1995) and 20 June 2003 No. 40 (in force from 1 April 2004 pursuant to the Decree of 20 June 2003 No. 728)..

**Section 85.** *Relationship to the demands of the parties. Implementation of maintenance, etc.*

The authority that determines maintenance may alter the maintenance payments to the children of the parties' marriage even if neither of the parties has demanded it.

The provisions of section 78 of the Children Act regarding the implementation of maintenance payments shall apply correspondingly.

Maintenance shall be paid in advance for each month, from the month in which the claim arises to the end of the calendar month in which the right to maintenance lapses, unless otherwise agreed or determined.

Amended by the Acts of 20 June 2003 No. 40 (in force from 1 April 2004 pursuant to the Decree of 20 June 2003 No. 728) and 29 April 2005 No. 20 (in force from 1 January 2006 pursuant to the Decree of 16 December 2005 No. 1562).

**Section 86.** *Right of a divorced spouse to a spouse's pension from a pension scheme other than the national insurance scheme*

A divorced spouse retains the right to a spouse's pension from a pension scheme other than the national insurance scheme if the marriage lasted at least ten years, and the divorced

spouse was at least 45 years old at the time of the divorce. By pension scheme is meant a public pension scheme and a private collective pension scheme with compulsory membership.

The right to a spouse's pension is contingent on the other spouse being or having been, at the time of the divorce, a member of a pension scheme other than the national insurance scheme which covers a spouse's pension. In such case the divorced person also acquires the right to a spouse's pension from a scheme of which the deceased spouse had become a member after the divorce.

**Section 87.** *Special provisions for when several persons are entitled to a pension*

If the deceased spouse had remarried, and the new spouse is entitled to a spouse's pension as mentioned in section 86 pursuant to the general rules of the pension scheme concerned, the pension shall be divided between the persons entitled in proportion to the number of commenced years for which each of them was married to the deceased. However, if one of them has waived the right, the pension accrues undivided to the other.

If a divorced spouse puts forward a claim in a pension scheme that also grants rights to a subsequent spouse, the latter may claim a part of the spouse's pension from a pension scheme of which the deceased was previously a member, even if this is not prescribed by the general rules of the pension scheme concerned.

**Section 88.** *Consequence if a person who is entitled to a pension remarries or dies*

If the person entitled to a pension contracts a new marriage while the previous spouse is alive, the right to a pension pursuant to the provisions in this chapter lapses. If a new marriage has been contracted after the death of the previous spouse, the rules laid down in the pension scheme concerned with regard to a surviving spouse shall apply.

If the right of a divorced or subsequent spouse to a pension lapses in the event of death or marriage, the entire pension shall accrue to the other provided that he or she is entitled to a pension from the deceased pursuant to section 86 or section 87. If the new marriage ends, and the right to benefits is revived pursuant to the rules of the pension scheme concerned, the benefits shall again be divided.

**Section 89.** *Lapse of right to spouse's pension on commission of a criminal act against the deceased*

If a spouse or divorced spouse is sentenced to an unconditional term of imprisonment for a criminal act against the person who has earned the right to a pension, and the latter dies as a result of the act, the right to a spouse's pension from any pension scheme other than the national insurance scheme lapses. Section 88, second paragraph, first sentence, shall apply correspondingly.

**Part IV. Provisional decisions, etc.**

**Chapter 17. Registration of items of property of spouses. Interlocutory measure and provisional decision**

**Section 90.** *Registration of items of property of spouses*

If an application for mediation has been made or if a petition has been presented for or proceedings instituted for separation or divorce, each of the spouses may demand that the district court immediately draw up an inventory of the items of property and debts of the spouses. The same applies if an application is made for division pursuant to section 57. The

provisions regarding registration in the Probate Act shall apply correspondingly in so far as they are appropriate.

Amended by the Act of 30 August 2002 No. 67 (in force from 1 January 2003 pursuant to the Decree of 30 August 2002 No. 938).

**Section 91.** *Interlocutory measure to safeguard the rights of a spouse in the settlement by division*

If, after separation has been demanded or proceedings for divorce have been instituted, there is reason to fear that a spouse will withhold items of property from the division or in any other way make it difficult to satisfy the rights of the other spouse pursuant to chapters 12 to 14, the spouse concerned may demand an interlocutory measure pursuant to chapter 15 of the Enforcement Act. When a public administration of the estate has been instituted, the decision is made by the district court that administers the estate, cf. section 57 of the Probate Act.

Amended by the Act of 30 August 2002 No. 67 (in force from 1 January 2003 pursuant to the Decree of 30 August 2002 No. 938).

**Section 92.** *Provisional decision regarding separation, right of use, maintenance, etc.*

On the application of a spouse the court may by order make a provisional decision regarding separation, the right to maintenance or the right to use a residence or ordinary household goods in the common home. Before separation is demanded or proceedings for divorce are instituted, a provisional decision may only be made if there are special reasons for doing so. Unless otherwise provided, a provisional decision shall apply until a legally enforceable decision on the question of separation, maintenance or right of use is made.

When there are special reasons for doing so, the court may by order prohibit a spouse from coming to the property or the residence in which the other spouse is staying.

A right of use based on a provisional decision pursuant to this section is also legally protected in relation to any person who in good faith acquires the residence or household goods.

**Section 93.** *Procedure on a demand for a provisional decision regarding separation, right of use, maintenance, etc.*

If proceedings concerning the demand or matrimonial proceedings mentioned in chapter 28 of the Civil Procedure Act are in progress, a provisional decision pursuant to section 92 shall be made by the court that is hearing such proceedings. Such a decision may otherwise be made by the district court at the place where the opposite party resides or is staying, or in urgent cases by the court at the place where the residence or household goods are located.

If a decision is not required immediately, the court shall as far as possible give the other spouse an opportunity to make a statement before the decision is made. The decision may be made without any mediation pursuant to the provisions of the Marriage Act. The court shall in its order determine a time limit for instituting proceedings. If this time limit expires without being extended, the decision ceases to have effect. The provisional decision may be implemented immediately.

If new information or altered circumstances justify it, a provisional decision may be amended pursuant to the provisions of this section.

Amended by the Act of 30 August 2002 No. 67 (in force from 1 January 2003 pursuant to the Decree of 30 August 2002 No. 938).

**Part V. Transitional provisions. Amendments to other Acts**

## **Chapter 18. Entry into force. Transitional provisions. Amendments to other Acts**

### **Section 94.** *Entry into force. Transitional provisions*

1. This Act shall enter into force from the date decided by the King.<sup>1</sup>
2. The provisions regarding the rights of spouses in the event of separation and divorce and regarding division do not apply in cases where circumstances specified in section 60 arise before the Act enters into force. However, the provisions of sections 79 to 85 apply in cases concerning the determination of maintenance or concerning an alteration or revocation of maintenance when the decision is made after the date of entry into force. The provisions regarding settlement on the death of one of the spouses do not apply when circumstances specified in section 78 arise before the Act enters into force.
3. The provisions regarding the right to a spouse's pension do not apply when the matter of a pension arises before the Act enters into force.

<sup>1</sup> In force from 1 January 1993 pursuant to the Decree of 13 September 1991 No. 615.

### **Section 95.** *Amendments to other Acts*

From the date this Act enters into force, the following amendments shall be made to other Acts: