

Australian Capital Territory

Married Persons' Property Act 1986

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About this republication

The republished law

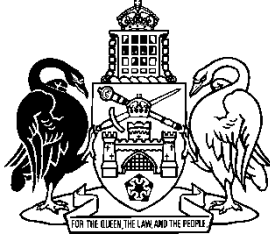
This is a republication of the *Married Persons' Property Act 1986* effective from 3 January 1989 to 17 December 1995.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
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Australian Capital Territory

MARRIED PERSONS' PROPERTY ACT 1986

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Reprinted as at 31 July 1991

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An Act relating to the rights and liabilities of married persons in respect of property

Short title

1. This Act may be cited as the *Married Persons' Property Act 1986*.¹

Interpretation

2. In this Act, unless the contrary intention appears, “court” means the Supreme Court or the Magistrates Court.

Legal capacity of married women

3. (1) Except as otherwise provided by another law of the Territory, a married woman has, for all purposes, the same rights, privileges, powers, capacities, duties and liabilities as a married man, whether she is acting in a personal, official, representative or fiduciary capacity.

(2) Subsection (1) applies in relation to any married woman, whether she was married before or after the commencement of this Act, and whether or not her marriage took place in the Territory.

Authority to pledge spouse's credit

4. (1) A husband living with his wife has the same presumed or implied authority to pledge his wife's credit as a wife living with her husband has to pledge her husband's credit.

(2) A reference in subsection (1) to the husband or wife of a person shall, where the person is living with another person of the opposite sex as the spouse of that other person on a *bona fide* domestic basis although not married to that other person, be read as including a reference to that other person.

Agent of necessity

5. Any rule of law or equity conferring on a married woman authority, as agent of necessity of her husband, to pledge his credit or to borrow money on his credit ceases to have any force or effect in the Territory.

Restriction upon anticipation or alienation

6. Any instrument executed after the commencement of this Act is void to the extent that it purports to attach any restriction upon anticipation or alienation to the enjoyment by a woman of any property that could not have been attached to the enjoyment by a man of that property.

Debts incurred before marriage

7. A married person is not liable for any debt incurred by his or her spouse before their marriage.

Crimes in respect of spouse's property

8. An act that would, if done by a married man in respect of any property of his wife, make him liable to criminal proceedings shall, if done by a married woman in respect of any property of her husband, make her liable to criminal proceedings.

Transfer of property to spouse or child

9. (1) Where property or an interest in property paid for by a woman with her money, or owned by a woman—

- (a) is vested in or transferred to her husband, or her child or another person to whom she stands in loco parentis; or
- (b) is vested jointly in or transferred jointly to herself and her husband, or herself and her child or herself and another person to whom she stands in loco parentis,

then, unless the contrary intention appears, the same presumptions of gift or advancement shall be taken to arise in respect of the property or the interest in property, as the case may be, as would arise if the property or interest had been paid for by a man with his money, or owned by a man, and had respectively—

- (c) vested in or been transferred to his wife, or his child or another person to whom he stands in loco parentis; or
- (d) vested jointly in, or been transferred jointly to, himself and his wife, or himself and his child or himself and another person to whom he stands in loco parentis.

(2) Where—

- (a) a husband and his wife both contribute to the purchase of property or an interest in property; and
- (b) the property or the interest is vested in or transferred to one spouse (in this subsection referred to as the “transferee”),

then, unless the contrary intention appears, the transferee shall be taken to hold the property or the interest, as the case may be, in trust for himself or herself and the other spouse as joint tenants.

Purchase or transfer of property before marriage

10. (1) Where property or an interest in property paid for by a person with his or her money or owned by the person (in this subsection referred to as the “transferor”) is, in the transferor’s contemplation of his or her marriage to another person (in this subsection referred to as the “transferee”) vested in or transferred to the transferee then, unless the contrary intention appears—

- (a) until the marriage takes place, the transferee shall be taken to hold the property, or the interest in property, as the case may be, in trust for the transferor; and
- (b) upon the marriage of the transferor to the transferee, the transferee shall be taken to hold the property or interest absolutely.

(2) Where property or an interest in property paid for by a person with his or her money or owned by the person (in this subsection referred to as the “transferor”) is, in the transferor’s contemplation of his or her marriage to another person (in this subsection referred to as the “transferee”), vested jointly in or transferred jointly to the transferor and the transferee then, unless the contrary intention appears—

- (a) until the marriage takes place, the transferor and the transferee shall be taken to hold the property, or the interest in property, as the case may be, in trust for the transferor; and
- (b) upon the marriage of the transferor to the transferee, the transferor and the transferee shall be taken to hold the property or interest as joint tenants.

(3) Where—

- (a) 2 persons, in contemplation of their marriage to each other, both contribute to the purchase of property or an interest in property; and
- (b) the property or the interest in property, as the case may be, is vested in or transferred to one of the persons (in this subsection referred to as the “transferee”),

then, unless the contrary intention appears—

- (c) until the marriage takes place, the property or the interest shall be taken to be held by the transferee in trust for himself or herself and the other person as tenants in common in shares proportionate to their respective contributions; and

- (d) upon the marriage of those persons, the property or the interest shall be taken to be held by the transferee in trust for himself or herself and the other person as joint tenants.

Housekeeping allowances

11. Where a married person makes a payment or allowance to his or her spouse to pay their joint household expenses or for similar purposes, any property bought with the payment or allowance and any money not spent from the payment or allowance shall, in the absence of any agreement to the contrary between the person and his or her spouse, be taken to belong to the person and his or her spouse as joint tenants.

Married couple as beneficiaries

12. For the purposes of the construction of a will, deed or other instrument in relation to a gift or other disposition of real or personal property to 2 or more persons as joint tenants or as tenants-in-common, any husband and his wife included among those persons shall, unless the contrary intention is shown, be treated as 2 separate persons for the purpose of calculating the share of the property to which each of the persons is entitled.

Applications to determine property disputes

13. Where any question arises between a husband and his wife in relation to the title to, or possession or disposition of, any property (including any question in relation to the investment by one spouse of money of the other spouse without the consent of the other) the husband or wife, or a third party on whom conflicting claims are being made by the husband and wife in relation to any property, may apply to the court to hear and determine the question.

Jurisdiction of Magistrates Court

14. The jurisdiction of the Magistrates Court to hear and determine a question referred to in section 13 is—

- (a) subject to section 10 of the *Magistrates Court (Civil Jurisdiction) Act 1982*; and
- (b) limited to a case where the question relates to property having a value not exceeding the amount specified in subsection 5 (1) of the *Magistrates Court (Civil Jurisdiction) Act 1982*.

Powers of the court

15. (1) In proceedings instituted by an application under section 13 in respect of property the court may, on the application of a party to the proceedings, grant an injunction restraining any person from making any threatened or apprehended transfer, assignment, sale or other disposition of the property until the application under section 13 is heard and determined.

(2) On the hearing of an application under section 13 in respect of property the court may make such orders in relation to the title to, or the possession or disposition of, the property as it thinks fit, and may, in particular, make orders for the sale of the property and the division of the proceeds of sale, or for the partition or division of the property.

(3) For the purpose of giving effect to any order made in relation to property under subsection (2), the court may set aside any transfer, assignment, sale or other disposition of the property that was made with a view to defeating an existing or apprehended order in respect of the property.

(4) When making an order in relation to property under subsection (2), the court shall have regard to the interests of, and shall make any order proper for the protection of, a person who purchased the property in good faith or any other interested person.

(5) Where an application under section 13 relates to money of the spouse of a married person that was invested by the person without the spouse's consent, the court may order that an amount equal to the amount of the money and any interest, dividend or other profit derived from the money be paid to the spouse.

(6) Where a third party referred to in section 13 makes an application under that section, the third party shall, for the purposes of the proceedings in relation to the application, be treated as a stakeholder only.

(7) On the hearing of an application under section 13 or subsection (1), the court may direct any inquiry touching the matters in question to be made in any manner the court thinks fit.

(8) Nothing in this Act shall be taken to affect any power of the court conferred by any other law of the Territory.

NOTE

1. The *Married Persons' Property Act 1986* as shown in this reprint comprises Act No. 18, 1986 amended as indicated in the Tables below.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Married Persons' Property Ordinance 1986</i>	18, 1986	26 June 1986	26 June 1986	
<i>Magistrates Court (Civil Jurisdiction) (Amendment) Ordinance 1988</i>	81, 1988	14 Dec 1988	3 Jan 1989	—

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 14	am. No. 81, 1988