

What is a Marriage Contract in Turkey?



Today, due to increasing divorce rates, lengthy and psychologically exhausting divorce proceedings, and property division lawsuits that occur after the finalization of the divorce, people are either afraid to marry or seek solutions for these potential consequences. This is because property divisions under the default legal regime often leave at least one party dissatisfied. To address this, the institution of the property regime agreement—commonly known as a marriage contract in Turkey—is regulated in Article 203 and subsequent articles of the Turkish Civil Code No. 4721. This legal tool is designed to provide legal certainty to the parties and protect them from long, exhausting judicial processes and the unfair loss of their assets.

Definition and Purpose

A property regime agreement, or a marriage contract in Turkey, as it is known among the public, is the spouses' choice of a property regime different from the default legal regime of participation in acquired property, or their modification of these regimes.

The purpose of spouses in making this contract is to regulate issues such as the division and use of the assets acquired during the marriage in the event of a possible divorce, according to their own conditions. Under a marriage contract in Turkey, spouses can pre-determine the management, use, and liquidation of assets acquired during the marriage by choosing one of the legally permitted property regimes or by modifying its provisions to the extent permitted by law.

Types of Marital Property Regimes in Turkish Law

Three types of property regimes are accepted in the Turkish Civil Code (TMK) No. 4721:

- **a) Legal property regime:**
 - Regime of participation in acquired property (Articles 218 to 241).
- **b) Property regimes subject to the spouses' choice:**
 - Separation of Property (Articles 242 and 243).
 - Shared Separation of Property (Articles 244 to 255).
 - Community of Property (Articles 256 to 281).
- **c) Extraordinary property regime:.**

If a **marriage contract in Turkey** is not agreed upon by the spouses, the legal regime of participation in acquired property will automatically apply to them. *(For detailed information about this regime, you can review our related article.)*

Formal Requirements for a Marriage Contract in Turkey

To make a valid **marriage contract in Turkey**, several conditions must be fulfilled together:

1. Capacity of the Parties

- The parties making the contract must have the capacity to discern.
- Persons with limited capacity can execute this transaction with the consent of their legal representatives.

- Since minors are not considered adults before marriage, they can only make this contract with the permission of their legal representatives. However, after marriage, they are legally considered of age and can enter into this contract on their own.

2. Formal Requirements

Since a **marriage contract in Turkey** functions as an official document, it is subject to certain formal requirements.

- According to the law, it can only be made through a declaration to the marriage officer during the marriage application.
- Alternatively, it can be made before a notary public in the form of an arrangement or approval.
- Agreements made without complying with these formal and procedural rules (for example, a protocol signed privately at home) are legally invalid.

3. Content Limitations

A marriage contract in Turkey can only be made in accordance with the content limits set by law.

- The parties can only choose the property regimes listed in the law.
- They can modify, add to, or remove provisions of these property regimes only to the extent permitted by law.
- Alongside these, general contract conditions must also be fulfilled, as the agreement is regulated by the special provisions of the Turkish Civil Code and the general provisions of the Turkish Code of Obligations. Contracts made in accordance with these conditions will be legally binding.

Termination and Modification of the Contract

A marriage contract in Turkey may be terminated under the following circumstances: the spouses' divorce, the annulment of the marriage, the death of one of the spouses, or by the execution of a new contract to this effect.

Spouses can modify or terminate the provisions of the current property regime by entering into a new marriage contract in Turkey that complies with the aforementioned conditions. If spouses wish to end or change the existing regime, a mutual joint will is required.

Extraordinary Intervention by the Judge

It is important to note that, in the presence of a justifiable reason, either spouse can request the judge to intervene in the existing property regime and convert it to the separation of property. Examples of justifiable reasons provided in the law include:

1. The other spouse's assets are being sunk into debt, or their share in the partnership is being seized.
2. The other spouse is endangering the applicant's or the partnership's interests.
3. The other spouse is unreasonably withholding the consent required for a transaction on the partnership's assets.
4. The other spouse refuses to provide the applicant spouse with information about their assets, income, debts, or partnership assets.
5. The other spouse continuously lacks the capacity to discern. Furthermore, the judge may also accept the existence of other justifiable reasons in a concrete dispute.

Frequently Asked Questions (FAQ)

What are the conditions for making a marriage contract in Turkey? Making a marriage contract in Turkey is subject to strict legal conditions. The generally accepted principle of freedom of contract is not applicable here. Parties can only choose from the regimes listed in the law and modify them within the limits set by the law. As a formal requirement, it must be executed at a notary's office or via a declaration to the marriage officer during the application. The parties must have legal capacity to act, and the contract must be signed by the parties (and their legal representatives, if restricted).

When can a marriage contract in Turkey be made? It can be made before marriage or at any point during the marriage, before it ends.

Can a marriage contract be made retroactively? As a general rule, it is not possible to make a **marriage contract in Turkey** retroactively to cover a past period. While there is some debate in legal doctrine, a 2019 Supreme Court (Yargıtay) decision ruled that it cannot be applied retroactively. The law and established Supreme Court jurisprudence state that it is valid from the moment it is made, and past acquired assets cannot be subjected to a different regime via a subsequent contract.

Can the contract be changed later? Yes, spouses can change the contract by entering into a new agreement, provided they comply with the conditions specified by law.

Under what circumstances does the property regime contract end? It ends with a new mutual contract made by the parties, through divorce, upon the death of one of the spouses, or upon annulment of the marriage.

Can a marriage contract be made after getting married? Yes, spouses can make a marriage contract in Turkey after getting married. In this case, the chosen regime enters into force upon execution of the contract, provided compliance with the explained conditions.

Can restricted persons make a property regime contract? Restricted persons may enter into this contract with the permission of their legal representatives.

Can the contract be made through a proxy/power of attorney? Because making a marriage contract in Turkey is a right strictly attached to the person, this contract cannot be made through a proxy.

Conclusion

A marriage contract in Turkey is an extremely important tool that clarifies the financial rights and obligations of spouses during their marriage. When done correctly and consciously, it prevents future disputes and protects the rights of both parties. For this reason, signing a contract before every marriage, taking into account the parties' social, economic, and even psychological conditions to protect both sides' interests, will provide legal certainty.