

## New Civil Code of Puerto Rico: Institution of Family

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### PRACTICE AREAS

- Corporate

### An McV Corporate Alert

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This is the third of eight Alerts on the recently enacted Civil Code of Puerto Rico (the “[New Code](#)”), which will repeal the current Civil Code of 1930, as amended (the “[Previous Code](#)”). The New Code becomes **effective on November 28, 2020**.

This Alert specifically addresses the **The Institution of Family**. Below are some of the key changes of the New Code:

#### Same-Sex Marriage

Same-sex marriage has been legal in Puerto Rico since July 2015, following the Supreme Court of the United States ruling in *Obergefell v. Hodges*, which held same-sex marriage bans unconstitutional. Under the New Code, the term “marriage” is defined as a civil institution arising from a civil contract by virtue of which [two natural persons](#) oblige each other to be spouses. This definition was amended to substitute the words “man” and “woman” with “two natural persons” and thus comply with the *Obergefell* ruling.

#### Spousal Representation

Article 402 of the New Code states that a spouse cannot represent the other spouse unless expressly authorized by said other spouse, judicial authority or law. However, it is unclear if Article 402 enables a spouse to individually represent the conjugal partnership (“*sociedad legal de bienes gananciales*”) to which he/she belongs since it does not specifically address this issue. Under the Previous Code, either spouse could individually represent the conjugal partnership constituted by them.

#### Ability of Minors to Marry

Under the New Code, the age of majority remains unchanged at 21. Consequently, the New Code stipulates that in order to get married, a minor who is 18 years old needs the authorization from: (i) parents with parental authority; (ii) a guardian or (iii) the court. In contrast to the current rule of law under the Previous Code, the New Code does not recognize any instance in

which an 18 year old minor may marry without authorization.

Further, even though the New Code expressly prohibits marriage by minors under 18 years of age, Article 409 of the New Code establishes that the marriage of a minor who has reached the age of 18 and marries without the corresponding authorization may not be contested if one of the spouses is pregnant or the child of both spouses is born.

### **Marriage Annulment Action**

Article 410 of the New Code establishes a statute of limitations for marriage annulment actions. This Article establishes that if, at the time of the constitution of the marriage, the cause of annulment was known by both spouses or by the spouse legitimized to file the action, the annulment action shall expire one year after the formalization of the marriage. If the cause of annulment is known after the formalization, the statute of limitations shall begin to run once the cause of annulment is known.

### **Torts Action for Spouse who Acted in Good Faith**

Pursuant to Article 416 of the New Code, in a marriage annulment action the spouse who acted in good faith can now receive compensation for any damages and/or losses he/she suffered as a result of the deceitful actions (*actuaciones dolosas*) of the other spouse. This claim must be raised within the marriage annulment action and resolved in the same judgment by which the court annuls the marriage.

### **Grounds for Divorce**

The New Code eliminates some of the grounds for divorce that currently exist under the Previous Code (e.g. cruel treatment, abandonment, adultery and separation). Instead, Article 425 of the New Code recognizes the following grounds for divorce:

1. Mutual consent; and
2. Irreconcilable differences
  - This ground allows a court to decree a divorce even if one spouse opposes it.

### **Third Party Administration during a Marriage Dissolution Process**

Article 452 of the New Code provides that a court may appoint a third person to administer the financial affairs of the marriage during the dissolution process in cases of extreme conflict between the spouses or when the particular circumstances of the family economy so require.

### **Preferential Attribution over Family Residence**

Pursuant to Article 476 of the New Code, when allocating the common property of the dissolved marriage, any of the former spouses may claim a preferential allocation of the residence which, at the time of dissolution, constitutes the main home of the marriage and family. When granting this request for preferential allocation, the court must consider each former spouse's possibility of acquiring his/her own home, the existence of other properties among the marital assets that can serve the same purpose, among other circumstances.

### **Right to Remain in the Family Residence**

Unlike the Previous Code, the New Code allows a former spouse to claim the right to remain in the property that was considered the main home of the marriage and family, even if the marriage produced no children.

### **Modification of Marital Agreements**

The New Code incorporates the rule of mutability of marital agreements and the marital economic regime, which was already recognized in Puerto Rico by Act 62-2018. The New Code establishes that those who join in marriage may, before and after the formalization of the marriage, select the marital economic regime which shall regulate their present and future assets.

In order to bind third parties, marital agreements, as well as any subsequent modifications to the same, must be registered in the Registry of Marital Agreements.

### **Spousal Donation**

The New Code eliminates Article 1286 of the Previous Code, thus allowing donations between spouses during a marriage regardless of the marital economic regime.

## **Nature of a Property Determined by the Will of the Spouses**

The New Code recognizes the possibility that spouses may, by mutual accord, classify as common or community (*“ganancial”*) property any property they purchase during the duration of the marital partnership, regardless of the origin of the funds or compensation used to pay or the form and period in which it is paid.

Article 517 of the New Code further states that, if the acquisition is made jointly and without the allocation of quotas, it is presumed that both spouses are in favor of classifying it as community property. If uncertain, the private or common nature of the first payment made to acquire the property will determine the property’s eventual nature, unless proven otherwise.

## **Judicial Assistance in the Administration of Marital Community Property**

Pursuant to Article 526 of the New Code, when the consent of both spouses is required for the execution of acts of administration or disposition and one of the spouses is unable to give his/her consent or unjustifiably refuses it, the other spouse may seek assistance from the court.

## **Civil Liability in Parental Recognition**

Under Article 579 of the New Code, a son or daughter may now receive compensation from his/her father or mother for any damages caused by the lack of voluntary and timely parental recognition. Notably, the New Code recognizes this as an exception to the concept of intra-family immunity, which prohibits family members of the same nucleus from suing each other in court in order to preserve family unity and parent-child relationships.

## **Consent to Medical Treatment**

Article 595 of the New Code states that any person of 18 years or older (instead of 21 years or older) may consent to emergency medical treatment for himself or herself or for his or her minor children.

## **Sex Change on Birth Certificate**

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The New Code prohibits an amendment to reflect a person's sex change on the original birth certificate. However, the court may authorize by judgment an entry in the margin of the original birth certificate to reflect the modification of a person's sex.

It should be noted that the New Code does not impair the already established process for applications for change of gender on a birth certificate issued by Puerto Rico's Demographic Registry ("Registry"). Currently, these applications must be accompanied by a passport, a driver's license or a certification issued by a health care professional who has a doctor-patient relationship with the applicant attesting to the gender. In these cases, the Registry must issue the certification, safeguarding privacy rights.

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