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# **GOOD TO KNOW ABOUT WOMEN AND OWNERSHIP IN BOSNIA AND HERZEGOVINA**

## Women as Property Owners in Bosnia and Herzegovina

In Bosnia and Herzegovina, men and women are equal in all spheres of life, as prescribed by the Law on Gender Equality in Bosnia and Herzegovina. All positive law regulations in Bosnia and Herzegovina, on direct or indirect way, further elaborate the issue of gender equality.

According to the statistics of Geodetic Administration for the year of 2017 the percentage of women registered as real estate owners is 29,6% in Republika Srpska and 38,4% in Federation of Bosnia and Herzegovina.

The right of ownership over the real estate is acquired by registration in land register, on the basis of different legal grounds such as: legal acts (for example contracts), the law (for example by creating new case, maturity), court decisions (heredity). Each of these methods of acquisition is elaborated in more details in the provisions of the Law on Real Rights of FB&H.

Every woman, if she is able-bodied, as well as any able-bodied man, can conclude various contracts that acquire the basis to register as the owner of the real estate. The most common are purchase contracts, gift contracts, life-long care contracts.

### Matrimonial property

If a woman is married and is engaged in any of above-mentioned legal acts during the period of their marriage, or if a man who is married is engaged in above-mentioned acts, in that case we are talking about matrimonial property.



## What is matrimonial property?

Article 251 of the FB&H Family Law stipulates that matrimonial property is consisted of property acquired by spouses from work for the duration of the marriage, including all the income from that property. Third-party gifts received during the marriage (in money, things, providing help with work, etc.) enter matrimonial property, regardless of which spouse received them, unless otherwise arise from the purpose of the gift, or if, from the circumstances at the time of giving a gift, it can be concluded that the presenter wanted to make a gift only to one spouse. The winnings from games of chance is matrimonial property. Revenues from intellectual property acquired during the marriage period are matrimonial property.

Article 252 of the Family Law of FB&H stipulates that marital partners in equal parts are co-owners of matrimonial property unless previously agreed differently.

This Law further stipulates that if a spouse is registered in the land register as the owner of the matrimonial property, then another spouse may request a correction of the registration, in accordance with the Law on Land Registry of the Federation of Bosnia and Herzegovina.

Therefore, although in the past years it happened that only one spouse has been registered in the land registers as owner, most commonly it was a husband, and it is about matrimonial property, our positive legislation made these changes easy for women, without long court proceedings. A woman, a wife, a co-owner may submit a request to the land registry office of the relevant court to correct the entry, submitting a notarized certificate of the registered owner, in this case a husband.

## Legal succession

The Law on Succession in FB&H prescribes who are legal heirs and hereditary rows. Thus, Article 10, paragraph 2. of the Law on Succession prescribes that heirs of the first hereditary order inherit equal parts. Moreover, who are the heirs of the first hereditary order? These are the descendant's spouse and the descendant's children. So, if a husband dies, leaving behind him a wife and two daughters, and if succession is conducted in accordance to the Law, all the property will, in equal parts succeeded by his wife and two daughters, each making 1/3 of the succession.

In practice, it often happens that just in cases of divorce or after the death of a spouse, the other spouse, who is most often a wife, has to prove by court that she is a co-owner of a real estate. Court proceedings take a long time, and can last for an average of 3-5 years and are quite expensive because court fees, lawyers, experts.

After the death of a spouse, the other spouse, in successor's proceedings, succeeds equal parts, together with children. There are frequent cases in practice that the property of a spouse has been acquired through work during the marriage, but the actual owner registered in the land register is a husband only. After the death of a spouse, the whole property, in accordance to the registered co-ownership share, is succeeded in equal shares a wife and children. If the descendant has two children, a wife and children with the share of 1/3 each will inherit the property. However, this property is a matrimonial property. It would only be right in that case that only one half of the descendants share would be inherited in three parts, and the second part of 1/2 to be considered as matrimonial property in the share of 1/2. How to solve it in a succession proceeding, which is faster and far cheaper? Very simple. In succession proceeding, all heirs may declare that 1/2 belongs to the descendant's wife as a matrimonial property, and 1/2 is inherited on equal parts. Thus, in this example, the wife will be enrolled in the land register as co-owner of  $1/2 + 1/6 = 2/3$ , One child will be co-owner 1/6 and the second child will be co-owner of 1/6 share.



## Legal acts and matrimonial property

There are situations when a husband, who is registered as the owner of 1/1 share of the matrimonial property, makes a deed of gift with some of his children, preserving a right for lifetime utilization of the property, and that neither the wife nor the other children know about this contract. Only after learning about its existence, a wife will have to, by law, ascertain the ownership over the matrimonial property, which is the subject of one of mentioned deed gifts, and will have to determine the void the part of the agreement in the part of 1/2. Again, this is about the expensive and long-lasting court procedure.

How to ease the situation and help women in the situations we have mentioned? If the real estate is acquired by legal transaction, some contract or agreement, it is necessary to change the legislation, which would be applied, for example, by notary, and at the same time, each seller/buyer, gift donor/gift receiver, alimony recipient/alimony provider should be requested an excerpt from the birth register, with entered marital status. If the status indicates that they are married, there should be the consent of the spouse to sell the property, to make a gift deed, or similar in order to sell it as a special property or as a matrimonial property.

In practice, and when concluding different types of contracts, a notary asks all contracting parties (seller/buyer, gift donor/gift receiver, alimony donor/alimony receiver) about their marital status, without checking register affidavit.

Now in B&H notaries are in charge of succession proceedings. Consequently, a notary should/would have to warn rightful heirs, even those from the will, that a wife has a legal right to demand exclusion of her co-ownership part from the property, which she rightfully acquired through her engagement in for the period of marriage duration. This word "engagement" creates confusion for years, and for a long time it was considered, just as it is today amongst uninformed, that if a wife is unemployed, she could not acquire co-ownership of property by her "engagement" during the period of marriage. This is a very wrong interpretation of the provision of the Family Law, and the attitude in the court practice is that a wife, even though she is not employed in any company, equally contributes in acquiring assets (by taking care of children, household etc.) which consists matrimonial property.

A woman, who is an owner/co-owner of the real estate accrued during the marriage, is substantially economically independent, which is very important factor in cases of domestic violence carried out by a husband. In order to reduce domestic violence rate, a woman has to be economically independent.

Another way to make a woman economically independent, at least when talking about the segment of matrimonial property and special assets, is prenuptial/marital agreement, which enables different modality for the regulation of all issues related to matrimonial property. Prenuptial/marital agreement is not a matter of love, or trust in sense "Do we really need this?", but is the issue of love and trust in sense "That's exactly what we have to do". Such agreement would be of essential importance in case when parents of one of spouses assigns their land for married couple to make their home on that land. Such agreement is, in most cases, verbally announced in a way that a father/father in law verbally hands over a plot to his son and daughter in law to build themselves a house. In Land Register, the father/father in law is registered as actual owner in the share of 1/1. On this plot, a son and a daughter in law build a house "with no documentation" i.e. without construction permit, or with construction permit addressed to a father/father in law. The construction of the house is completely financed by the money of a son and daughter in law, a daughter in law previously sold a parcel of land she inherited, took the loan, spent all of her saving etc. At the end, registered owner of the plot and the house is a father/father in law. How is daughter in law going to prove that, by investing into construction, she became a co-owner? The court procedure takes lots of time, and is very expensive.



## How to prevent or reduce the number of such situations?

Exactly by educating women on these topics. It is of essential importance to educate women coming from rural areas, where far fewer women are registered as co-owners of real estates with their husbands. Second target group would be women victims of domestic violence, women in safe houses and those who often report domestic violence. The third target group would be all other women – daughters, sisters, wives.

### Sources:

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2. The Law on Real Rights of FB&H (Official Gazette of the Federation B&H No. 66/13)
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4. Law on Inheritance in FB&H (Official Gazette of the Federation of Bosnia and Herzegovina No. 80/14)