DRAFTING A LIFETIME MAINTENANCE CONTRACT BEFORE NOTARY PUBLIC

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Abstract

Changes in the way people live have made the lifetime maintenance contract one of the important arrangements in everyday life. This contract constitutes a civil-law institution that developed from an inheritance-based relationship into an obligatory legal relationship. It emerged from the interplay of traditional family and economic relations—rooted in feudal societies characterized by private property –proprietas whereby an individual (often an elderly person lacking sufficient support or care) would transfer their assets to another person in exchange for being provided with care and support for the remainder of their life.
This paper will examine the evolution of the contract from its traditional origins to its formal legal structure. It will also examine the contract's characteristics, the identification of the parties (the provider and the recipient of care), the parties' rights and obligations, the legal effects of the lifetime maintenance contract, the legally prescribed form before the competent authority or a notary public, the cadastral description associated with the contract, contract termination, and other related aspects.

Keywords: lifetime maintenance contract, notary, legal effect, procedure before a notary

1. Introduction

The lifetime maintenance contract dates back to the Middle Ages. Initially, it was based on traditional social arrangements; however, with the emergence of private property -*proprietas*, it evolved into a civil legal institution. Under this arrangement, an elderly individual—or a natural person in need of care and support—would transfer their assets to another person (the maintenance provider) on the condition that the latter provide care for the transferor's lifetime in exchange for acquiring the specified property. This obligation encompasses maintenance, the provision of housing, food, and clothing, appropriate care during illness and old age, and coverage of daily and shared living expenses. Today, this legal concept is regulated by the Law on Obligations in North Macedonia. "Under a lifetime maintenance contract, the maintenance provider is obliged to support the maintenance recipient for the duration of their life, while the recipient, in return, transfers their entire estate—or a specific portion thereof—to the provider, with with the transfer of the property postponed until the recipient's death."1 It is also noteworthy that, while the drafting of such contracts was previously the responsibility of a competent authority or court, this role is now performed by a notary public.
Lifetime maintenance contracts are agreements in which, in exchange for the promise of property transfer upon death, the parties agree to a a common life or joint ownership, or establish an obligation for one party to maintain and care for the other, cultivate their property, and—following their death—arrange for their burial or perform another act for the same purpose.

2. Characteristics

The legal characteristics of this contract include the following:

- it is a **bilateral, onerous contract**—meaning one party assumes the obligation of providing maintenance, while the other contracting party pledges to transfer all or part of their existing assets (as they stand at the time of the contract's conclusion) to the former;

- it is an **aleatory contract**, because at the time of its conclusion, the lifespan of the maintenance recipient is unknown; consequently, the ultimate extent of the maintenance provider's obligation cannot be determined (the value ratio—i.e., the value of the property to be transferred versus the cost of maintenance—is unknown);
- it is a **mixed contract or legal transaction** wherein the delivery—and thus the transfer of ownership—is deferred until the death of the maintenance recipient;
- the property subject to the contract must belong to the maintenance recipient at the time the contract is concluded and must be accurately described therein;
- the contract must be executed in the form prescribed by law; failure to observe the required form means that the contract is considered not to have been concluded -*ad solemnitatem*, and the relationship between the parties is governed by the rules on unjust enrichment (Articles 1030–1035); -Finally, this is a causal contract. The purpose for which the recipient enters into the agreement is to obtain necessary support, whereas the provider enters into the agreement to acquire the property that is the subject of the contract.

3. The Parties – The capacity of the parties and the group of persons who may conclude a lifetime maintenance contract

A lifetime care contract may be entered into by persons with full legal capacity, because it is a serious bilateral legal transaction. The notary must conduct the procedure and take into account specific circumstances—such as advanced age or illness—as these factors could affect the contract's validity due to potential issues regarding the expression of will or the uncertainty concerning the duration of the contract. When necessary, and with the parties' consent, the notary may also seek a medical expert's opinion regarding the maintenance recipient. In many instances, however, this type of contract is frequently abused.

The care recipient may only be a natural person, whereas the maintenance provider may be either a natural or a legal person. However, if a natural or legal person who cares for the recipient as part of their profession wishes to enter into such a contract, they cannot do so without the prior consent of the guardianship authority. We believe that this contract may also be entered into mutually by persons who are legally obliged to support one another, such as spouses, parents and children, and so forth. Furthermore, the question arises: is it possible to conclude this contract through legal representatives (such as a parent or guardian) or an attorney? In this regard, the provisions governing this contract contain no express indication, meaning it neither expressly permits nor expressly prohibits it. Only the Law on Inheritance of North Macedonia, in Article 121, paragraph 4, expressly stipulated that the maintenance provider may be represented by a representative and defined the form, content, and validity period of the power of attorney. Under this provision, it is established that the power of attorney must be executed as a public document, is valid for only three months from the date of issuance, and must precisely specify the person with whom the contract is to be concluded (identifying the maintenance recipient) as well as the specific terms of the contract. Regarding the possibility of concluding a lifetime support contract through a representative acting for the support recipient, we also consider it permissible to conclude such a contract via a power of attorney—rather than through a representative in the general sense.5 The power of attorney must take the form of a definitive legal instrument, specifying the contracting parties and the specific content of the lifetime maintenance contract to be concluded, as well as the validity period of the power of attorney. Given that this is a significant bilateral legal matter, persons without legal capacity or with limited legal capacity must obtain the approval of the Center for Social Work (the guardianship authority).6 There may be more than one person on the provider and recipient sides of the maintenance arrangement. If multiple persons are obligated to provide maintenance, they appear as joint and several obligors. If lifetime maintenance is contracted

for the benefit of several persons as recipients, each of them has an individual right to the agreed benefits and performance.
In cases involving multiple maintenance recipients who are co-owners of the property to be transferred, each conveys their respective share separately and contracts for their own maintenance; each appears as a contracting party and signs the contract. Upon the death of one such person, the contract terminates solely with respect to them, and their share of the co-ownership is transferred to the maintenance provider. A distinction must be made regarding lifetime maintenance established for the benefit of third parties as recipients; in such cases, the maintenance obligation persists until the death of the third party, and ownership of the contract assets passes to the maintenance provider upon the death of the co-contracting party—though a different arrangement may be agreed upon, such as the property passing only upon the death of the third party. The notary must advise and warn the parties regarding this matter. Here, as a co-contracting party of the maintenance provider, the person whose property is involved—rather than a third party—appears as the beneficiary of the maintenance.

4. Subject of the lifetime maintenance contract

The subject matter of the lifetime maintenance contract, as a binding bilateral legal act, includes the rights and obligations arising for both the maintenance recipient and the maintenance provider. Under the contract, the maintenance provider commits to supporting the maintenance recipient (or a third party) for the duration of their life, while the recipient, in exchange, leaves the provider all or a specified part of their property, with the actual transfer of ownership deferred until the recipient's death. The recipient is entitled to receive the agreed-upon maintenance (food, care, nursing) for the remainder of their life.
Accordingly, the recipient is entitled to the following: healthy food (three or more meals per day), clean and properly maintained clothing, hygienic living conditions, regular medical check-ups, care during illness, necessary medication, etc. In many cases, these obligations may also be provided for the recipient's spouse. The maintenance recipient is obligated to transfer ownership of the property—which is the subject of the lifetime maintenance agreement—to the maintenance provider. The transfer of the property is deferred until at the time of the maintenance recipient's death. However, the maintenance recipient may transfer the property to the maintenance provider's administration immediately upon the conclusion of the agreement. The property subject to the lifetime maintenance agreement must be individually defined and specified (movable property, immovable property, or claims). In this instance, the maintenance recipient may only commit the property they owned at the time the agreement was concluded to this arrangement.
By the nature of this agreement, the maintenance provider assumes the obligations first. The maintenance provider acquires the rights arising from the lifetime maintenance agreement upon the death of the maintenance recipient. The maintenance provider is obliged to fulfill their obligations conscientiously and in a timely manner. These obligations apply during the recipient's lifetime, though certain duties must be performed even after their death (funeral, erection of a tombstone, memorial, etc.) (Article 1031 of the LMD).

5. The Notary as a Public Official in Drafting the Lifetime Maintenance Contract

In the case of lifetime maintenance contracts, the form is a crucial element and condition for validity; Article 1030 of the Law on Obligations (LMD) mandates—on pain of nullity—a written form certified by a notary, requiring the contract to be read aloud in advance and a warning issued regarding its inheritance implications—specifically, that the property subject to the contract does not form part of the inheritance estate. Furthermore, the notarial form is

not merely a formality but a condition for the contract's validity; it constitutes an *ad solemnitatem* requirement involving the preventive role of the notary, whereby the notary must explain to the parties the legal consequences of concluding such a contract.
The parties are required to provide: identification documents; the title deed (specifically, the property certificate from the Real Estate Cadastre Agency); and information regarding any any existing encumbrances or mortgages on the property, to ensure the validity of the subsequent transfer.
The notary is then obliged to draw up the notarial deed, verifying the parties' identities and their intent. If a party is illiterate, blind, deaf-mute, or does not understand the official language in which the notarial deed is drafted, the notary must secure two witnesses or an interpreter at the time the deed is drawn up. Subsequently, the notary drafts the notarial deed and reads the lifetime care contract aloud to the parties, warning them about the legal consequences—specifically warning the transferor that the property involved is excluded from the estate and that forced heirs cannot claim their compulsory share from it.
Next, the parties, witnesses, and any interpreter sign the document. Representation by proxy is permitted—though only for the maintenance provider—provided the authorization is in the form of a public document; it must specify the person with whom the contract is to be concluded and the property or subject matter involved, and it remains valid for only three months.The notarial deed becomes effective upon the affixing of the notary's seal and signature; the notary archives the original and issues certified copies to the parties.

6. Termination and Cancellation of the Lifetime Maintenance Contract

When drafting the notarial instrument, the notary is obliged to take into account the provisions of Article 1030 of the Law on Obligations (LMD). Termination may occur by mutual agreement or by court order. The parties to the contract may mutually terminate the lifetime maintenance contract even after its performance has commenced, regardless of the reasons (Article 1033 of the Law on Obligations). We believe that the contracting parties may mutually terminate the contract only in the same form in which it was concluded (Article 1033, paragraph 1 of the LMD), as this is required by the purpose of the form prescribed for the contract's conclusion. The lifetime support agreement may be terminated unilaterally if the other party fails to fulfill the obligations stipulated in the agreement (Article 1033, paragraph 3 of the LMD). One common ground for termination—specific to lifetime support agreements, unlike other types of agreements—is a breakdown in the relationship between the contracting parties. Such a reason is fully justified, considering that a maintenance obligation cannot be conceived if the personal relationship between the recipient and the provider of maintenance has deteriorated to the point where living together has become intolerable (Article 1033, Paragraph 2 of the Civil Code). In the event of the termination of the agreement, the party not responsible for the termination has the right to claim compensation from the other party for the damage suffered.
A lifetime maintenance agreement, like other agreements, terminates upon the death of the maintenance recipient. At the moment of death, by operation of law, the maintenance provider acquires rights to the property that is the subject of the lifetime maintenance agreement. Unlike the death of the recipient, the lifetime maintenance agreement does not terminate upon the death of the maintenance provider. In the event of the maintenance provider's death, their obligations pass to their spouse and heirs—provided they agree to this (Article 1035, Paragraph 1 of the LMD). Conversely, if they do not agree to continue the lifetime maintenance agreement and lack a justifiable reason for doing so, the agreement terminates. In such a case, these persons have no right to claim compensation for the maintenance previously provided. However, if the maintenance provider's spouse and heirs are unable to assume the contractual

obligations, they have the right to claim compensation from the maintenance recipient for the maintenance previously provided. The court shall determine this compensation at its discretion, taking into account the financial circumstances of the maintenance beneficiary and the persons authorized to extend the lifetime maintenance agreement (Article 1035, paragraph 4 of the Civil Code). The lifetime maintenance agreement shall also terminate if declared invalid. In such a case, in accordance with civil law rules, it shall be deemed never to have been concluded. In any case, the contracting parties or persons with a legal interest may challenge the lifetime maintenance contract on grounds of absolute nullity, lack of intent, or other reasons, in accordance with the provisions of the Law on Obligations.

7. Legal effect of the lifetime maintenance contract

Given its characteristics as a binding, bilateral, and onerous legal act—producing legal effects both during the parties' lifetimes and upon death—it is increasingly used in our practice as a means for a person to dispose of their assets upon death. The aforementioned characteristics and specific features of this agreement allow the support recipient, on the one hand, to designate a specific "heir" and, on the other, to exclude unwanted statutory heirs from their right to a compulsory share. Thus, in practice, this agreement indirectly emerges as a "third—informal and non-statutory—basis for succession," alongside the will and the law.
The inheritance-law effect of a lifetime support agreement lies in the fact that the property the support recipient committed under the agreement does not form part of their estate. Consequently, if the support recipient had committed their entire estate and acquired no further assets after the agreement was concluded, no hearing will be held regarding the will. Consequently, statutory heirs will be unable to exercise their right to a compulsory share. According to the case law of the Supreme Court of Macedonia from the 1980s, a lifetime care agreement constitutes a valid legal basis for acquiring ownership rights and registering rights over real estate in the public registry. If the maintenance recipient did not dispose of their entire estate, or subsequently acquired other assets, the estate subject to statutory and testamentary succession will comprise only those assets acquired after the conclusion of the lifetime care agreement.

8. Securing rights arising from a lifetime maintenance contract

As previously noted, the maintenance recipient retains ownership of the property specified in the contract until their death and may dispose of that property (e.g., alienate it, pledge it); however, if the existence of a lifetime maintenance contract—or any right derived from it—is recorded in the real estate cadastre, then third parties acquiring a right to such real estate are deemed to be acting without good faith. To provide a measure of security for the maintenance provider, the law allows them to secure their contractual right by recording it in the public register (Article 1032 of the LMD). The notary is obliged to inform the parties about this and warn them of the consequences of recording—or failing to record—that right in the public register. This entails entering a record of the existence of the lifetime maintenance contract. The maintenance recipient is not liable for their debts following the death of the maintenance provider; however, the contracting parties may agree otherwise—specifically, they may agree that the provider will settle claims from certain creditors, though this applies only to the maintenance recipient's existing debts (i.e., debts existing at the time the contract is concluded). In this regard, the notary public shall provide appropriate guidance and warnings within the document.

9. Conclusion

The lifetime maintenance contract constitutes a distinct civil-law instrument; it has evolved from a succession-based relationship into an obligation-based relationship that holds both economic and social significance. The fulfillment of obligations is not limited merely to the provision of material resources but may also encompass the care, assistance, and support necessary for the maintenance recipient's daily life. Such relationships must always be grounded in good faith (*bona fides*), respect for the elderly, and fair dealing between the parties.

The legal form in which this contract is concluded is of particular importance. The notary plays a decisive role here by upholding legal certainty through the identification of the parties and their intent, as well as by verifying compliance with legal requirements. The notary's role is not merely formal; rather, they act as a guarantor of legal certainty regarding the assets involved.

The lifetime maintenance contract also carries significance within the realm of inheritance law. This contract facilitates the transfer of the estate—including the portion reserved for forced heirs, who are precluded from challenging the agreement—while simultaneously creating potential risks for the parties involved, particularly when obligations are not clearly defined or when a party fails to fulfill the duties stipulated in the contract. Although the contract is concluded -inter vivos (between living persons), its execution takes effect -mortis causa (upon the death of the de cujus); this distinction is fundamental to the contract's proper functioning from the very moment of its conclusion.

The lifetime care contract remains a vital legal instrument for regulating property relations and ensuring personal support throughout one's life. Its effectiveness depends largely on the correct application of legal provisions and respect for the parties' intentions. Furthermore, the assurance provided by the formalization of the agreement through a notary guarantees compliance with the relevant laws—specifically the Law on Obligations, the Law on Inheritance, and the Law on Notaries of North Macedonia—thereby rendering this legal mechanism more efficient and secure for our society.

References

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