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Attorneys – Conveyancers – Notaries

- Since 1999 -

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GETTING MARRIED: WHAT ARE THE OPTIONS?

Getting married is an exciting and big step in every couple's relationship and that is why it is even more important to know the legal implications involved when getting married. Knowing exactly what is going on at the beginning means that there will be less fighting or complications involved should the marriage comes to an end. It is only logical and realistic to think in this way because choosing a specific marital regime can have implications on your career / personal assets or estate / business', etc.

1. IN COMMUNITY OF PROPERTY

What this means is that the parties' separate estates are joined at marriage (this is then known as the joint estate) and each party has the right of disposal over the assets of the joint estate. However, consent is required from other party to alienate or encumber estate assets.

This system lends itself to financial equality but this can also be to the detriment of the other party, for example in the case of insolvency. Certain assets may be excluded from the joint estate, for example by way of a will, but this category is limited.

Should parties not enter into an Antenuptial contract prior to their marriage, their marriage will automatically be deemed to be in community of property.

Upon divorce or dissolution of the marriage the joint estate gets split 50/50 between the parties.

2. OUT OF COMMUNITY OF PROPERTY, ACCRUAL EXPRESSLY EXCLUDED

This is a marital system, which is done by way of Antenuptial contract which is drawn up by your attorney and signed in front of a notary, community of property and

profit and loss is excluded. The parties must also specifically exclude the accrual system, otherwise it will apply to their marriage.

This system is most commonly known as “What your is yours and what’s mine is mine.”

Under this system each party maintains their separate estates and each has full right of disposal over his / her own assets in their own assets without having to get any prior consent. The parties then upon dissolution of their marriage should walk away with what they have each built up within their own estates.

This model can be recommended where the parties entering into the marriage already have substantial estates or income or if one party does not want to be held liable for any debts that the other spouse may incur during the marriage or already have at the time of the marriage.

It is also a popular system to use to protect assets from creditors.

3. OUT OF COMMUNITY OF PROPERTY WITH THE ACCRUAL SYSTEM INCLUDED

The accrual system was introduced to create a form of sharing of the assets that are built up during the marriage by the parties. However, the parties are married out of community of property, so the debts are not jointly owed and the assets are not jointly owed.

When the marriage is dissolved, by either death or divorce, the accrual or growth to each party’s estate is worked out. This is done by take the net value of the estate at dissolution less the net value at commencement of the marriage. The commencement value of each estate is stated in the Antenuptial contract entered into by the parties. If one of the estates has grown more that the other during the marriage, the party with the smaller growth has a claim against the party with the greater growth, for half of the difference between the two estates.

The Consumer Price Index (inflation rate) is used to make allowance for the difference in value of money at the commencement and the dissolution of the marriage when calculating the accrual.

An accrual claim can only be made on dissolution of marriage, not during the marriage.

4. WHAT IF AFTER YOU ARE MARRIED YOU DECIDE THAT YOU WANTED TO BE MARRIED OUT OF COMMUNITY OF PROPERTY WITH ANC OR UNDER A DIFFERENT REGIME?

Should the parties want to enter into a Post-Nuptial contract to express their true intention it will prove to be far more complicated and costly. The parties are required to make a joint application to the High Court for authority to change their matrimonial property system. There are a lot of formalities involved such as advertising in the newspaper to notify the creditors, etc. The same applies if the couple concerned are married out of community of property without the accrual and they want the accrual to apply, or if the couple wants to change their matrimonial property system in any other way.

Your application to the court does not guarantee a positive outcome.

IT IS ALWAYS BEST TO CONSULT AN ATTORNEY BEFORE GETTING MARRIED SO THAT YOU ARE ABLE TO CHOOSE THE RIGHT MATRIMONIAL SYSTEM FOR YOURSELF AND YOUR PROSPECTIVE SPOUSE, ONE THAT MEETS YOUR NEEDS AND REQUIREMENTS.

YOUR ATTORNEY WILL ADVISE YOU OF WHAT WILL WORK BEST FOR YOU AND WHAT WILL PROTECT YOU IN THE FUTURE.

“LOVE IS BLIND, BUT MARRIAGE IS AN EYE OPENER”