

Matrimonial property regimes

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Tags

My partner and I are getting married soon and have heard about the different matrimonial property regimes one can enter but I am not sure what the difference is and what each one entails.

There are three types of matrimonial property regimes in South Africa. The three are marriage in community of property, marriage out of community of property with the inclusion of the accrual system and marriage out of community of property with the exclusion of the accrual system. When parties decide on either of the two latter, they must enter into a contractual agreement with one another before a notary public. It is important to understand what they all entail before one gets married.

Marriage in community of property is the so-called “default” regime, because all marriages are deemed to be in community of property if an Antenuptial Contract is not concluded before the marriage. This is also the most popular regime because it is the easiest one to conclude. When two parties get married in community of property, their estates will be joined together. Every asset and liability each party had before getting married and acquires during the marriage will become one estate and on dissolution of the marriage, the estate will be divided equally between the parties.

This system is based on the theory that each spouse, whether employed or at home running the household, contributes equally to the marriage and on dissolution of the marriage is entitled to share equally in the joint estate. It is important to note that when one enters this type of matrimonial regime, in some instances consent will be needed from the other party. One of the biggest disadvantages of this system is that if one party incurs debt, the debt will form part of the joint estate.

When one enters into a marriage out of community of property with the accrual system, it means that the parties entered into a contractual agreement with one another, which is known as an Antenuptial Contract. This contract must be entered into before a notary public and has to be registered at the Deeds Office. In this regime, the two estates of the spouses before the marriage remain separate. No consent will be needed from the other spouse in order to handle his/her own affairs. The accrual system will be applicable at the dissolution of the marriage or upon death, whichever may occur first.

What happens with the accrual is that whatever the parties acquired during the existence of the marriage, will be compared and the half of the difference in accrual will be owed by the estate which shows a larger accrual. On dissolution of a marriage out of community of property with the accrual system, inheritances and donations received by a spouse from a third party will not be included in the accrual.

In a marriage out of community of property without the accrual system, each party's estate will remain separate. This system enables parties to control their own estate and affairs independently and on the dissolution of marriage, the parties will retain their own assets and liabilities. It is important to note that even if parties are married out of community of property excluding the accrual system, both parties will have to contribute to the household as a married couple – it is one of the duties that arises from marriage.

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