



SABERA SINGH & ASSOCIATES

ATTORNEYS - NOTARIES - CONVEYANCERS

Information brochure: Ante-nuptial Contracts

1. Matrimonial Property Regime

The Matrimonial Property Regime the Parties are married in is an important aspect to consider when getting divorced. This we unpack below.

2. In Community Of Property

The default Matrimonial Property Regime is that of "In Community of Property". What this basically means is that there is one joint estate. In other words, there are no longer two separate estates. By way of example, if the husband takes out a loan, the wife is also responsible to repay it. This is so as the Joint Estate incurred the debt. The husband could not have incurred the debt solely as he does not have a separate estate.

3. Out Of Community Of Property

It has become the trend for people to get married "Out of Community of Property". What this means is that there are two separate estates. It is as if you are not married. The wife can enter into loans and agreements without the consent of her husband, and his estate would not be affected by that. There are however two variables to being married Out of Community of Property - that is married Out of Community of Property with the inclusion of the accrual regime, and the other without.

4. Accrual Regime Included In Your Marriage

If the accrual regime is not specifically excluded in the Ante-nuptial Contract, then it is by default included. What this means, is that during the marriage, there are two separate estates. You can do what you please without the consent or consideration of the other party's estate. However, at divorce, or death of one of the parties, you must share in half the difference of the accruals of each estate. So, for example, if the accrual regime applies, and at divorce, the husband's estate is worth R 10 000,00 and the wife's estate is worth R 5 000,00; then he should pay her R 2500,00 in cash. The same would apply at death. Both parties would, therefore, leave the marriage with the sum of R 7 500,00. This regime would be beneficial where the wife or husband stays at home, looking after the household and children. The other spouse would be working on building an empire.

5. Accrual Regime Expressly Excluded In Your Marriage

Let's say the parties got married Out of Community of Property. However, in their Ante-nuptial contract, they specifically excluded the accrual regime. In that case, there would be two separate estates during the marriage. And at divorce or death, there would still be two separate estates and neither spouse would have to pay the other spouse any amount. If both spouses are working during the marriage, building their own empires, then this regime would be a better option.