



LEGAL NEWSLETTER

NEWSLETTER
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MARRIAGES

3 of the different ways of being married and other connections in South Africa:

1. IN COMMUNITY OF PROPERTY;

FIRST MARRIAGE: Joint undivided shares in all assets brought into the marriage and accumulated during the marriage.

SECOND MARRIAGE: In case of a previous marriage which was dissolved as a result of death of a spouse, some of the assets of a party entering into a new marriage may be excluded in terms of the stipulations of the Will of the predeceased spouse.

2. OUT OF COMMUNITY OF PROPERTY:

WITH EXCLUSION OF THE ACCRUAL SYSTEM:

The individual parties keep their assets they bring into the marriage and each party accumulates his/her assets during the term of the marriage.

3. OUT OF COMMUNITY OF PROPERTY:

WITH INCLUSION OF THE ACCRUAL SYSTEM

THE ACCRUAL SYSTEM IS INCLUDED IN ALL ANTENUPTIAL CONTRACTS AND IF IT IS NOT REQUIRED, IT MUST SPECIFICALLY BE EXCLUDED)

The parties make an inventory of all assets they respectively bring into the marriage and these values are registered with the antenuptial contract at the Deeds office.

The parties accumulate assets independent of each other during the course of the marriage.

At termination of the marriage, either by divorce or death of one of the parties, the joint growth of the parties must be divided.

The party whose assets grew the least has got a claim against the estate of the party whose assets grew the most to equal the growth.

Example:

(For purposes hereof we accept that a male and female are involved)

Assets at commencement of the marriage.

Male	<u>R 1 000 000.00</u>	Female	<u>R 500 000.00</u>
Growth male	<u>R 4 000 000.00</u>	Growth female	<u>R 2 000 000.00</u>
Total joint growth			<u>R 6 000 000.00</u>
50% of total growth			<u>R 3 000 000.00</u>
Claim of female against the estate of male			<u>R 1 000 000.00</u>
Value of growth of both parties thus:			<u>R 3 000 000.00</u>

NB. At a real calculation inflation on the starting assets is taken into account

4. LIVING TOGETHER.

According to present legislation parties living together has no rights regarding assets accumulated during the partnership, in other words each party keeps what they respectively acquired during the partnership.

It is thus very important that the parties when entering into a living together relationship make a contract regarding ownership of property and distribution thereof at termination of the relationship during their lifetime and upon death of one of the parties. It is further of utmost importance that the parties execute a Will in which they stipulate the distribution of assets upon death.

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