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ATTORNEYS INC

MATRIMONIAL REGIMES

On the eve of the happiest day of your life, filled with last minute preparations for the big day, it is easy to forget about the legal consequences of your marriage.

It is however, essential that couples select the correct marital property regime, which will go a long way in protecting one another financially and getting a marriage off to a sound start.

There are three different systems, namely:

1. **Married in Community of Property**

Each spouse joins their respective estates, which includes all assets and liabilities, and they are then regarded as one entity.

Upon death or divorce, the joint estate is valued and each spouse (or their estate) is entitled to an equal half share of the joint estate. Each spouse will also be equally liable should there be outstanding debts.

This option is no longer as popular as it once was due to a number of disadvantages such as:

1. Today a number of spouses are self-employed, and this system does not protect the other spouse should the business's creditors come after the assets of the joint estate;
2. Should the marriage dissolve, each spouse will share equally in the joint estate irrespective of their actual contribution;
3. In most instances a spouse will require the other's consent should they wish to enter into certain contracts, i.e. Suretyships, bonds etc

2. **Married Out of Community of Property WITHOUT the application of the Accrual System**

For all intent and purposes, the estates of both spouses are kept entirely separate before, during and after the marriage. "What's mine is mine and what's yours is yours".

The biggest disadvantage with this system is if one spouse is less financially independent it may lead to unfairness. For example a number of women (or men) support their spouse's career advancement by running the household and offering support which cannot be measured in monetary terms. Upon divorce, they may end up walking away with nothing.

This system is typically popular amongst spouses who have been married previously, who are both financially independent or have acquired substantial assets prior to the marriage.

3. **Married Out of Community of Property WITH the application of the Accrual System**

This system is by far the most popular amongst young couples today. It combines the protection of an out of community marriage with the notion of sharing and rewarding each spouse equally for their advancements throughout the duration of the marriage.

Each spouse's estate is given a value at the commencement of the marriage. Upon death or divorce, each spouse's estate is again valued. The difference between these two amounts represents the growth (or reduction) in each spouse's estate during the marriage.

The difference between the two growths constitutes the ACCRUAL. The spouse with the smaller growth will have a claim against the other spouse for half this difference.

Take the following scenario as an example:

John starts the marriage with a commencement value of nil, as does Anne. After 3 years they decide to part ways.

Anne had a very successful business during the marriage and her estate is now valued at R 500 000. John stayed at home to cook and clean and his estate remained at nil.

Anne's growth is R500 000 and Peter's is nil. The difference between the two is R 500 000. This amount constitutes the accrual.

Upon their divorce, the court will award John R 250 000 and Anne will be left with R 250 000. EQUAL SHARES IN WHAT THEY ACCUMULATED TOGETHER DURING THE MARRIAGE.

Should a couple wish to get married out of community of property with or without accrual then they must sign an Antenuptial Contract (ANC) before their wedding day.

Should you require advice and/or assistance in preparing your ANC contact

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