

ESTATE PLANNING

01

Marriage options: Do I need an ANC?

Estimated time to conclude telephonic interview - 2 minutes

As family law and estate planning attorneys, we have realised that when entering into marriage, most of our clients are not aware of the laws that have a direct effect on their estates and only get to be conscious of them when they divorce. The aim of this advice pack is to highlight the different matrimonial regimes in South Africa, but more particularly to discuss an option available to those whose marriage is subject to an accrual system as far as protecting their claim to the growth of their spouses' estates is concerned. We show that the Matrimonial Property Act 88 of 1984 does provide for the division of the growth of the marriage whilst the parties are married.

In practice, parties to a marriage often enter into a marriage without deciding the marital regime that will be applicable to their marriage. On divorce, parties are faced with consequences that they did not prepare themselves for when they married. It is well documented that in terms of South African Family Law, prospective spouses can either marry in community of property, out of community of property with or without the application of the accrual system. The marital regime choice that prospective spouses make will determine their proprietary rights both during the subsistence of their marriage and when their marriage is dissolved either by death or divorce.

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We will need at least the following information to complete this interview:

- The full name of the person who will be making use of the financial support package;
- The identity number or passport number of the person making use of the package.

Antenuptial Contract (an "ANC")

Estimated time to conclude telephonic interview - 7 minutes

In order for a prospective spouse to marry in any regime other than community of property, they have to conclude an antenuptial contract (ANC). An ANC may be referred to as a contract that is concluded by prospective spouses before the marriage, which details the terms and conditions of the union and thus exclude community of property. This contract can, among others, ensure that spouses are not held liable for each other's debts and do not share in each other's profits arising from the marriage. It further enables parties to transact without each other's consent where consent would ordinarily be required if they were married in community of property.

In terms of s 87(1) of the Deeds Registries Act 47 of 1937 '[a]n antenuptial contract executed in the Republic shall be attested by a notary and shall be registered in a deeds registry within three months after the date of its execution or within such extended period as the court may on application allow'. As such, we submit that it is imperative that such a contract is drafted by a practising notary public, because vaguely drawn antenuptial contracts can result in costly litigation when parties divorce.

We will need at least the following information to complete this interview:

- The husband's full name, identity/passport number, address and the current value of his estate (i.e. all his assets).
- The wife's full name, identity/passport number, address and the current value of her estate.
- The name of the town and the province in which the ANC will be signed.
- If possible: the name of the notary public before whom the ANC will be signed and the name of the magisterial district in which he/she practices.



CONTACT YOUR

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