








ANTENUPTIAL AGREEMENTS

An easy to understand explanation of the different types of marriage regimes in SA

YOUR OPTIONS WHEN GETTING MARRIED ARE:

1. **IN** community of property
2. **OUT** of community of property **WITHOUT THE ACCRUAL SYSTEM**
3. **OUT** of community of property **WITH THE ACCRUAL SYSTEM**

IT IS VERY IMPORTANT TO KNOW:

-  Choose carefully and correctly before your get married. You will need a Court Order to change it after the wedding.
-  You must sign the ANTENUPTIAL AGREEMENT **before** the wedding **in front of a Notary**. If not, you will be deemed to be married IN community of property.
-  You can sign the ANTENUPTIAL AGREEMENT **personally** in front of a Notary or, should this be impractical or inconvenient, you can **authorise** someone else in writing to sign on your behalf in front of a Notary.
-  The ANTENUPTIAL AGREEMENT MUST be **REGISTERED** at the DEEDS OFFICE within 3 MONTHS after you signed the ANTENUPTIAL AGREEMENT. The NOTARY will attend to the registration.
-  Once you signed the ANTENUPTIAL AGREEMENT, the Notary will give you a **CERTIFICATE OF CONFIRMATION** and you can then get married. You don't need to wait for the registered ANTENUPTIAL AGREEMENT.

1.

IN COMMUNITY OF PROPERTY

“What is mine is yours, and what is yours is mine”

From date of marriage, you and your spouse will only have one joint estate and will share all assets and all liabilities. In the pictures below, A has R10 000 and B has R8 000. Once they are married, A and B are joint owners of R18 000-00. If B borrow money from anybody, A will also be liable to repay the loan. At the end of the marriage, all assets and debts are divided **equally between A and B**.

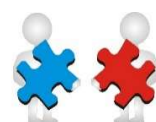
BEFORE








DURING



AFTER

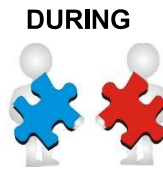








-  No ANTENUPTIAL AGREEMENT is needed.
-  Both spouses must sign legal contracts (such as selling, buying or mortgaging of property or signing surety).
-  Should one of the spouses get sequestrated, the JOINT estate is sold to pay the debt.
-  You can still have your own separate Will. You will only be able to leave your half of the joint estate to your heirs.
-  The joint estate is divided equally between the spouses in event of death or divorce.

2. OUT OF COMMUNITY OF PROPERTY WITHOUT THE ACCRUAL SYSTEM

“What is yours is yours, and what is mine is mine”

Each spouse has his/her own separate assets and liabilities before, during and after the marriage.



-  Each spouse is only liable for his/her own debt during the marriage.
-  You will not need the written consent of your spouse to enter into any legal contract.
-  If one spouse is sequestrated, only that spouse’s assets are sold to pay his/her debt.
-  In the event of divorce or death, you will have **NO CLAIM** against the estate of your ex-spouse due to being married to him/her, even if you have contributed to the growth in the estate of your ex-spouse.
-  If you want your spouse to benefit from your estate at your death, you must state that in your **WILL**.
-  You may consider getting married **WITHOUT** the accrual system, if you will not be financial dependent on each other, each has his/her own established estate and you will not be contributing, directly or indirectly, to the growth of the each other’s estate during the marriage.

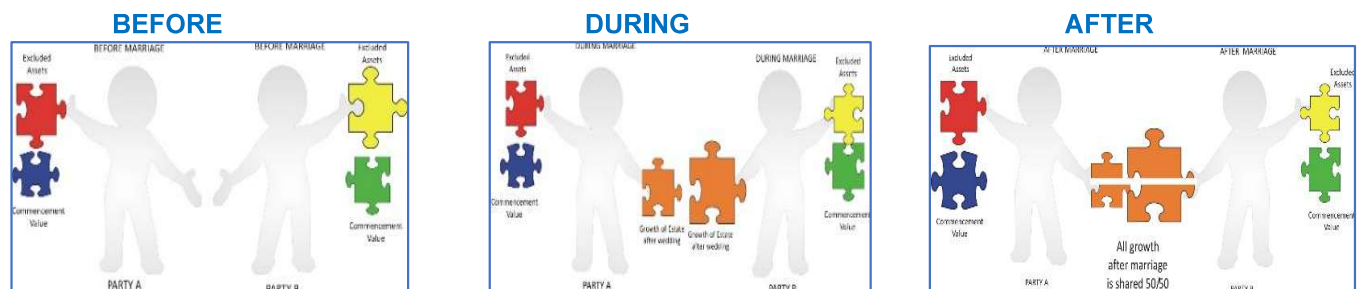
3. OUT OF COMMUNITY OF PROPERTY WITH THE ACCRUAL SYSTEM




**“What is yours is yours, and what is mine is mine,
but everything that we acquire during the marriage,
will be divided equally when the marriage ends”**


During the marriage, each spouse has his/her own separate assets and liabilities. The financial position is the same as in the option above (without the accrual system). The difference comes in when the marriage ends. Calculations are then done to determine if one spouse may have a claim against the other spouse.


A spouse will have an accrual claim against the other spouse, if his/her estate grew less during the marriage than the estate of the other spouse.


To calculate with how much each spouse’s estate grew during the marriage, the values and assets agreed in the **ANTENUPTIAL AGREEMENT** are used. The growths are added together and each spouse is entitled to a half thereof. The spouse with the smaller estate will have claim against the other spouse.



-  Each spouse is only liable for his/her own debt during the marriage. Each spouse has his/her own assets.
-  You will not need the written consent of your spouse to enter into any legal contract.
-  If one spouse is sequestrated, only that spouse’s assets are sold to pay his/her debt.

-  In the ANTENUPTIAL AGREEMENT, each spouse must declare his/her:
- **NET START VALUE:** Add up the value of ALL your assets (excluding the EXCLUDED ASSETS mentioned below) and deduct all your debt. The balance in Rand is your NET START VALUE.
 - **EXCLUDED ASSETS:** Any asset, that you currently have, may be excluded from the accrual system. The asset is kept separate and not taken into account when the start value or end value of the spouse are calculated. In other words, it is ignored when the growth in a spouse's estate is calculated and therefor will not be subject to a possible claim from the other spouse. Examples of excluded assets are immovable property, pension, investments, shares or any other asset that grows in value.

 Should there be a difference in the growths of between the spouses' estates, the spouse with the bigger growth must pay half of the difference to the spouse with the smaller growth so that each will have a half share of their combined growths


 Inheritances and donations are also excluded by the Law from the accrual calculations and not taken in account when the growth in the estate of a spouse is calculated.

 Herewith an example of the accrual calculations:

SPOUSE A		SPOUSE B	
End Value	R20 000	End Value	R40 000
Less: Start Value	R10 000	Less: Start Value	R20 000
Less: Excluded Assets	R 2 000	Less: Excluded Assets	R 0
Less: Inheritance	<u>R 0</u>	Less: Inheritance	<u>R 2 000</u>
	<u>R 8 000</u>		<u>R18 000</u>

TOTAL GROWTH (ACCRUAL) ACCUMULATED: R26 000

Total accrual is divided 50/50 between spouses = R13 000 each

 You may consider getting married WITH the accrual system, if you foresee that due to the circumstances known or unknown to you, your estates may not grow equally during the marriage. One spouse may not be able to grow his/her own estate, but will be contributing directly, or indirectly, to the growth of the other spouse's estate. This may result in an unfair situation when the marriage ends and you will rather share in the growths of each other's estates.

OUR COSTS

The costs are R1 500-00.

The following are included in the costs:

-  Drafting of ANTENUPTIAL AGREEMENT
-  Advice on contents of ANTENUPTIAL AGREEMENT given your specific circumstances
-  Attending to amendments to the ANTENUPTIAL AGREEMENT on your instructions
-  Instructions on signing of the ANTENUPTIAL AGREEMENT
-  Registration in the Deeds Office in Cape Town
-  Delivery of the original registered ANTENUPTIAL AGREEMENT to you for safe-keeping

GET STARTED

STEP 1: Complete and sign the INSTRUCTIONS FORM e-mailed to you.

STEP 2: Deposit the COSTS (R1 500-00) in the Attorney's Trust Account (Korf Attorneys, Trust Account, ABSA Bank, Branch code: 632 005; Account number: 408 098 3844; Reference: Your name and surname)

STEP 3: E-mail/fax the following to office@virtuallawyers.co.za

1. INSTRUCTION FORM
2. DEPOSIT SLIP
3. COPIES OF BOTH OF YOUR IDENTITY DOCUMENTS
4. UTILITY BILLS AS CONFIRMATION OF YOUR RESIDENTIAL ADDRESS/ES
5. (If you were previously married, a copy of your DIVORCE ORDER or your previous spouse's DEATH CERTIFICATE must also be provided).

STEP 4: The Notary will send you a DRAFT ANTENUPTIAL AGREEMENT and POWER OF ATTORNEY and ask you for your instructions about any amendments. The Notary will attend to the amendments.

STEP 5: The Notary will send you the FINAL ANTENUPTIAL AGREEMENT and POWER OF ATTORNEY with instructions of how to sign the ANTENUPTIAL AGREEMENT and POWER OF ATTORNEY.

STEP 6: Sign the ANTENUPTIAL AGREEMENT and the POWER OF ATTORNEY in the presence of two witnesses.

STEP 7: E-mail/fax the signed ANTENUPTIAL AGREEMENT and the POWER OF ATTORNEY to the Notary.

STEP 8: The Notary will legally execute the ANTENUPTIAL AGREEMENT, and fax / e-mail you a copy of the executed ANTENUPTIAL AGREEMENT and a CERTIFICATE OF CONFIRMATION.

STEP 9: Send the original signed ANTENUPTIAL AGREEMENT and POWER OF ATTORNEY to the Notary's offices per registered post, courier or deliver the documents by hand at the offices of the Notary.

IT IS VERY IMPORTANT THAT THE ORIGINAL SIGNED DOCUMENTS REACH THE NOTARY TO ENSURE THAT IT IS LEGALLY EXECUTED, VALID AND REGISTERED

STEP 10: The Notary will lodge and register the ANTENUPTIAL AGREEMENT at the DEEDS OFFICE in CAPE TOWN and confirm in writing to you once registered. (This process at the Deeds Office normally takes 2 to 3 weeks).

STEP 11: The Notary will contact you when the original registered ANTENUPTIAL AGREEMENT is received back from the Deeds Office to arrange delivery thereof to you for safe-keeping. (Receipt of the original registered ANTENUPTIAL AGREEMENT from the Deeds Office normally takes 2 to 3 months from date of registration).

OUR COMMITMENT

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Although we pass the savings on to our clients by charging reduced costs, we do not compromise on quality of service and advice. Our Attorneys are practicing Attorneys with Fidelity Fund Certificates issued by the Legal Practice Council, which ensures that we maintain the highest professional and ethical standards and that you are duly protected.

KORF ATTORNEYS / NOTARIES / CONVEYANCERS / ESTATE ADMINISTRATORS

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