







MARRIAGE 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:

-  Choosing the correct regime for your circumstances are important. It can't be changed after the wedding, unless you apply to the Supreme Court for permission.
-  If you do NOT to a sign a MARRIAGE AGREEMENT in front of a Notary before you get married, you will be married IN community of property. To change this, you will also have to apply to the Supreme Court.
-  To get married OUT OF community of property, either WITH or WITHOUT the Accrual system, you must sign a MARRIAGE AGREEMENT BEFORE you get married in front of a NOTARY.
-  You can sign the MARRIAGE AGREEMENT personally in front of a Notary or, should this be impractical or inconvenient, you can authorise someone else to sign on your behalf in front of a Notary.
-  The MARRIAGE AGREEMENT MUST be REGISTERED at the DEEDS OFFICE within 3 MONTHS after you signed the MARRIAGE AGREEMENT. The NOTARY will attend to the registration.
-  You don't need to wait for the MARRIAGE AGREEMENT to be registered before you can get married. Once you have signed the MARRIAGE AGREEMENT, you will get a CERTIFICATE to show to the Marriage Officer that you have signed a MARRIAGE AGREEMENT.

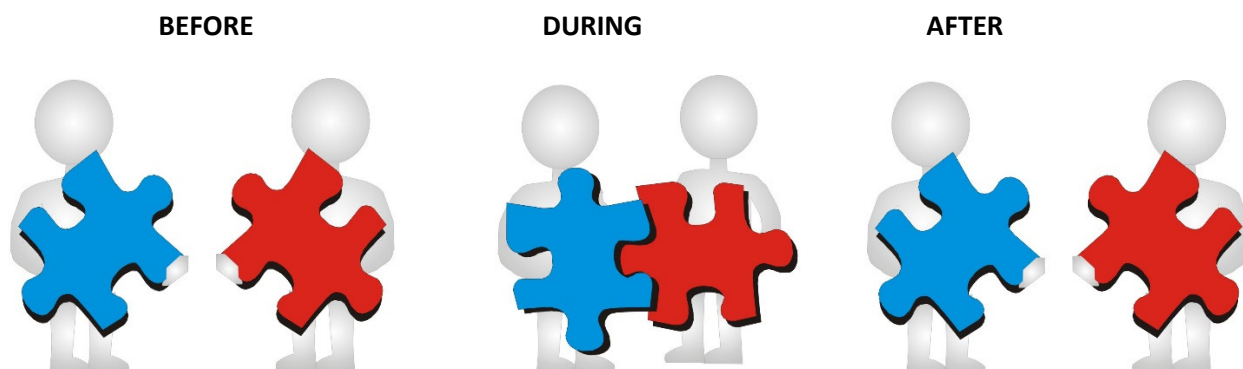
1.

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.



- 👉 No MARRIAGE AGREEMENT is needed.
- 👉 Both spouses must sign legal contracts, such as contract for the 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.

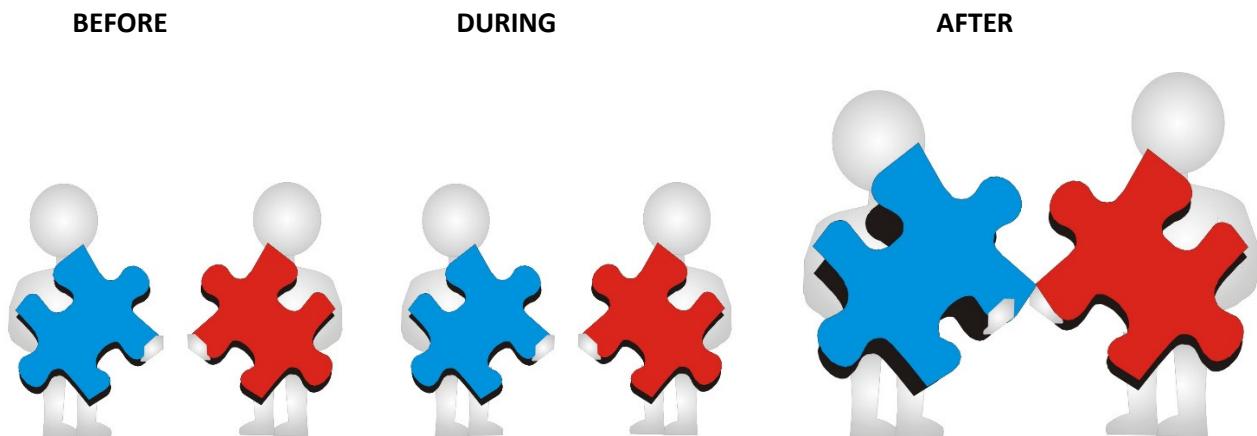


2.

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.



- 👉 A MARRIAGE AGREEMENT **MUST** be signed before the wedding in front of a NOTARY.
- 👉 The MARRIAGE AGREEMENT must be **REGISTERED** in the Deeds Office within 3 MONTHS from date of signature. The NOTARY will attend to the registration.
- 👉 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 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

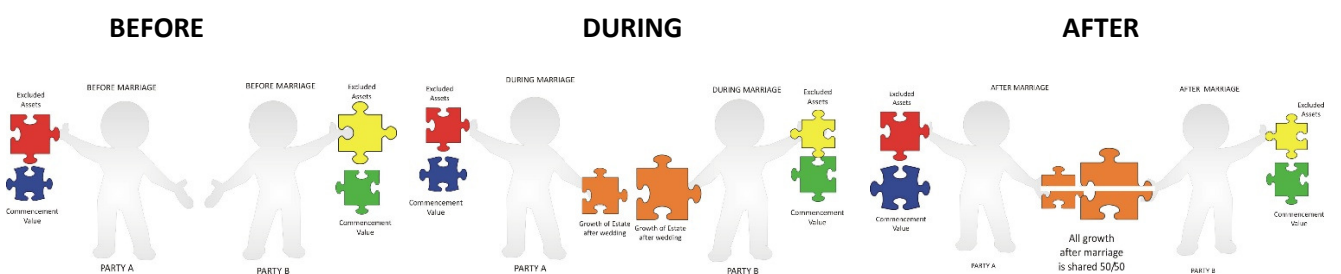
**“What is yours is yours, and what is mine is mine,
but everything that we acquire during the marriage,
will be divided equally when the marriage ends”**




Each spouse has his/her own separate assets and liabilities before and during the marriage. During the marriage, the financial position is the same as in the previous section 2. The difference comes in when the marriage ends. Calculations are then done to determine if one spouse may have an accrual 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 terms of the MARRIAGE AGREEMENT will be vital. The value of a spouse’s estate at the start of the marriage and any excluded assets mentioned in the MARRIAGE AGREEMENT, will not be taken in account to determine the growth in a spouse’s estate.

Should there be a difference in growth of between the spouses’ estates, the spouse with the bigger growth must pay half of the difference to the spouse with the smaller growth.




-  A MARRIAGE AGREEMENT **MUST** be signed before the wedding in front of a NOTARY.
-  The MARRIAGE AGREEMENT must be **REGISTERED** in the Deeds Office within 3 MONTHS from date of signature. The NOTARY will attend to the registration.
-  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 event of divorce or death, accrual calculations are done to determine if one spouse has an accrual claim against the other. A claim will be calculated as agreed in the MARRIAGE AGREEMENT.
-  In the MARRIAGE 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 calculations to be done when the marriage ends. The asset is kept separate and not taken into account when the growth in the estate of a spouse is calculated. Examples of excluded assets are immovable property, pension, investments, shares or any other asset that grows in value.
-  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.

COSTS

The costs are R1 350.00



The following are included in the costs:

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

OUR SERVICES

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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. All our Attorneys give their personal attention to all matters assigned to them and have typically at least 20 years of experience. Our Attorneys are practicing Attorneys with Fidelity Fund Certificates issued by the Law Society, which ensures that we maintain the highest professional and ethical standards and that you are duly protected.

HOW TO PROCEED

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

STEP 2: Deposit the COSTS (R1 350-00) in the Attorney's Trust Account (banking details are on the INSTRUCTION FORM)

STEP 3: Email/fax the following to the Attorney

1. INSTRUCTION FORM
2. DEPOSIT SLIP
3. COPIES OF BOTH OF YOUR IDENTITY DOCUMENTS
4. UTILITY BILLS AS CONFIRMATION OF YOUR RESIDENTIAL ADDRESS/ES



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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 Attorney will send you a DRAFT MARRIAGE AGREEMENT and POWER OF ATTORNEY and ask you for your instructions about any amendments. The Attorney will attend to the amendments.

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

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

STEP 7: Email/fax the signed MARRIAGE AGREEMENT and the POWER OF ATTORNEY to the Attorney.

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

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

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

STEP 10: The Attorney will lodge and register the MARRIAGE 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 from date of lodgement).

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

Should you have any questions, please contact us.

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