

So you want to get married, what now? There is always going to be some legal documentation which you will need to sort out before you can get legally married in South Africa. This article aims to give a brief outline of the three types of marital regimes recognised in South Africa.

The 3 types of marital regimes recognised In South Africa are:

- **Marriage in community of property**
- **Marriage out of community of property excluding the accrual**
- **Marriage out of community of property including the accrual.**

1. MARRIAGE IN COMMUNITY OF PROPERTY

Marriage in Community of Property is the default regime in South Africa. This is the result of a marriage without an antenuptial contract (an ANC) and forms a communal joint estate where the parties are joint administrators of the estate; each spouse owns fifty percent undivided share of the joint estate. Assets are equally shared and the spouses are jointly and severally liable for all debts incurred by either party during the subsistence of the marriage. On termination of the marriage (death or divorce) the joint estate is split equally.

2. MARRIAGE OUT OF COMMUNITY OF PROPERTY WITH THE ACCRUAL SYSTEM

Spouses' assets and liabilities are kept separate and they do not require consent from the other spouse to dispose of any asset. Furthermore, each spouse is protected against the insolvency of the other. Upon termination of the marriage (death or divorce) the two separate estates are valued. The spouse's estate which shows no growth / lesser growth acquires a claim against the other spouse's estate for half the difference between what has accrued in the two estates during the subsistence of the marriage. This regime helps to maintain financial equality between spouses due to the fact that often the contributions made to the marriage cannot be financially measured (for example if the wife stays at home and looks after children).

The accrual system only applies with an antenuptial contract (ANC). The ANC must be drafted and calculated to incorporate shared assets during the marriage.

The following are assets excluded when determining the accrual system:

- Non-Patrimonial damages or delictual damages that spouse(s) receives in the marriage
- Any donations made between spouses
- Any inheritance spouse(s) receive
- Any assets that are excluded in the antenuptial agreement

3. MARRIAGE IN COMMUNITY OF PROPERTY WITHOUT THE ACCRUAL SYSTEM

Marriage out of Community of Property is a marriage regime where there is an ANC in place. All assets and liabilities of each spouse are kept separate. A spouse does not require consent from the other to dispose of any assets, as in the case of marriage in community of property, and the estate of each spouse is protected against the insolvency of the other.