

Guide

How To Choose Your Marriage Contract



Contracts To Protect My Assets

In life when we have major life events, we put contracts in place to protect us and our assets. Contracts you might need in your life will vary depending on your life stage.

For example - Those who want to get married, will need to have a marriage or ANC (Anti – nuptial) contract.

What is an ANC – Anti -Nuptial contract?

- An antenuptial agreement, otherwise known as a prenuptial agreement or pre-nup, is a contract made between two individuals who are planning to get married. Antenuptial agreements are documents that set forth the rights of each spouse and the property division in the event of a divorce.

We have different options when we want to get married.

Some people can take a year to plan their wedding day, but spare very little time for important decisions that will affect their lives when there's a death or divorce.

We have two main contract types. The one is 'in-community of property', and the other is 'out of community of property'.

Marriages out of community of property can then also be divided into two different contract types: the one is with the accrual system and the other one is without the accrual system.

In-community marriages, where people are married in community of property, is the default option in South Africa.

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So, if you get married without entering an antenuptial contract, then you are automatically married in community of property.

That also applies to civil unions under the Civil Union Act of 2007, because a civil union solemnised under the Civil Union Act has the same legal consequences as a marriage under the Marriage Act of 1961.

If you did not enter an antenuptial contract before getting married, you are married in community of property, which means that the two spouses own everything that they owned before the marriage and everything that they will accumulate during the marriage, in joint equal and undivided shares. So, there's joint ownership in all the assets and liabilities in the marriage. If one partner creates a lot of debt the other spouse is responsible for paying back the debt. If one spouse inherits from a deceased parent, the other spouse is entitled to half of the inheritance.

If you married out of community of property without the accrual, then each spouse owns his or her own assets that were owned prior to the marriage, as well as everything that is accumulated during the marriage, and there is no claim of the one against the other on the dissolution of a marriage, either by death or by divorce. With the accrual system, which is the default option if you are married out of community of property, in other words, you entered a contract after November 1, 1984, the accrual system applies, unless you explicitly excluded it in your antenuptial contract.

So, in a marriage under the accrual system, each spouse still owns everything that was collected or accumulated during the marriage and prior to the marriage, but there is a claim upon the dissolution of the marriage in favour of the spouse who enjoyed the smaller accrual during the marriage.

An ante-nuptial contract be registered in the deed's office before the marriage.

What Is Suretyship?

When a bank advances money to its customer, it often requires security from a third party by way of a contract of guarantee (i.e., a contract of suretyship) to secure the money advanced to the customer. It has been stated that a "suretyship" is the generic term given to contracts in terms of which one person (the surety) agrees to answer for some existing or future liability of another (the principal) to a third person (the creditor), and by which the surety's liability is in addition to, and not in substitution for, that of the principal.

