17 interesting facts and tips on marriage contracts

1. If you get married without signing a marriage contract, you will automatically be married in community of property.
2. If you are married in community of property,
i) the assets of both spouses form part of the joint estate and can be attached by creditors for debts incurred by either spouse;
ii) the assets of both spouses form part of the joint deceased estate upon death of one of the spouses, which makes the winding-up process of the deceased estate more cumbersome and expensive.
3. If you are married out of community of property, the assets of your spouse can as a general rule not be attached for your debts and would also not be part of your insolvent estate were you to be sequestrated.
4. If you plan to get married out of community of property, you need to decide on whether to include or exclude the accrual system governed by Chapter 1 of the Matrimonial Property Act, 1984.
5. The idea of the accrual system is to ensure that the spouses equally share in the growth of their estates from the date of their wedding.
6. You should have a clause in your marriage contract in terms of which the accrual claim if you do get married with the accrual system, is not enforceable where the spouse, who is entitled to the accrual claim, is declared insolvent.
7. Inheritances received after the wedding are not part of the accrual of a spouse's estate for purposes of calculating accrual claims.
8. Inheritances received before the wedding are part of the assets of a spouse for purposes of calculating the end value of a spouse's estate when applying the accrual system except if they are specifically excluding in the marriage contract.
9. You can exclude specific assets from the accrual system in your marriage contract.
10. Your pension is part of the assets in your estate for purposes of calculating the beginning and end values of your estate when applying the accrual system in the case of a divorce.
11. Your marriage contract can be registered at the deeds office after your wedding as long as
i) it was signed before your wedding and;

ii) it is registered within three months from the signature date of the contract.

12. A marriage contract is also called an antenuptial contract or an ANC.

13. A marriage contract must be signed in front of an attorney who is also a notary. The contract is therefore referred to as a notarial agreement.

14. You can change your marital regime, for example from in community of property to out of community of property, after your wedding. This is, however, an expensive exercise as it amongst others and entails a high court application.

15. The accrual system will in many cases, where the marriage is dissolved through the death of one of the spouses, not really make a difference as the surviving spouse will in most cases, in any event, inherit everything from the spouse who passes away first. Where the marriage is dissolved through divorce, the accrual system, on the other hand, will normally make a substantial difference to the distribution of assets between the spouses.

16. Spouses, married out of community of property, can as a general rule enter into an agreement without the consent of his or her spouse.

17. A spouse, married in community of property, can as a general rule not enter into an agreement without the consent of his or her spouse except if one of the exemptions catered for in section 15 of the Matrimonial Property Act, 1984 applies, for example where the agreement is concluded “by a spouse in the ordinary course of his profession, trade or business”.

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