Antenuptial Contracts And How They Are Executed

In South Africa, the default marital regime is in community of property, except where the parties entered into an antenuptial agreement – in the movies, it is more commonly known as a “prenup” or a “prenuptial agreement”. The movies tend to give it a bad rap, as many people are opposed to entering into such an agreement. Why would you thus conclude such an agreement?

For one, the spouses are not liable for each other’s debts being their own. For another, you do not need your spouse’s consent to enter into certain agreements. Also, when one of the spouses passes away, the process of reporting and winding up the deceased estate is cheaper and simpler.

An antenuptial contract signed or executed in the Republic shall, in terms of Section 87(1) of the Deeds Registries Act, 47 of 1937, be attested by a notary and registered at the Deeds Registry within three months from the date it was signed or executed.

In certain instances, the intended spouses can give a power of attorney to someone else to appear before the notary on their behalf if they cannot. This, however, could be risky as the date of appearance before the notary should always be before the wedding. If the authorised person does not know your wedding date and appears before the notary after the wedding, such an agreement will unfortunately not be a valid antenuptial contract. In such an event, the spouses would have to approach a court for the registration of a postnuptial agreement – which is more costly.

Therefore, you should consider your options before getting married. Ask all your questions and chat with a notary about the implications of signing and registering such an agreement.

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