



Newsletter Edition 2:

In this edition of the newsletter we will be discussing the consequences of marriage and ante-nuptial contracts.

We will also be bringing you up to date news and changes in legislation – changes that affect our every day lives.

Should you wish us to cover any pertinent issues in this newsletter, drop us an email. We would be happy to cover any Family Law related topics and queries that you are interested in, or to just keep in touch.

Should you be in need of a consultation please call us on 011 467 1165 or e-mail on jennifer@jenniferscholtz.co.za.

We have significant experience in all family law issues including maintenance, custody, same sex partnerships and single parent rights and divorce.

For more information on the services we offer please visit www.jenniferscholtz.co.za.

Legally yours

Jennifer



The Consequences of Marriage:

Marriage is the union of two persons to the exclusion of all others for life.

Marriage creates certain invariable consequences that cannot be changed:

- * Both parties attain the status of a major;
- * A right of intestate succession is created between the spouses;
- * A spouse's capacity to act is restricted if married in community of property.

However, parties are entitled to make their own arrangements insofar as property is concerned. This is called a variable consequence of marriage and involves entering into an ante-nuptial contract ("ANC").

Did you know?:

We are able to draft any ANC which you and your intended spouse may require. Send us an e-mail request and we can send you a quote. All quotes include one initial consultation in which the various marital regimes are explained for you to consider, drafting the contract, drafting the letter for your minister, having the contract notarized, and registered at the deeds office.

* Marriage in community of property

If an ANC is not concluded prior to getting married then a marriage in RSA will automatically be in community of property. All debts incurred before marriage and all assets acquired before marriage become joint debts and assets after marriage. Certain acts require the written consent of the other spouse, for example the sale of immovable property. At the end of the marriage the joint estate is divided into two halves, one half belonging to each spouse.

* Marriage out of community of property

In this instance the parties must conclude an ANC before the marriage with the accrual system specifically excluded. The parties will have two separate estates and each party controls their own estate.

* Marriage out of community of property including the accrual system

Throughout the existence of the marriage the parties have two separate estates. A spouse may declare a commencement value in the ANC, consisting of all or some of the net assets that they bring into the marriage. If a declaration is not made or if the liabilities of the spouse exceed his/her assets, his/her commencement value will be deemed to be nil. Parties may also exclude specific assets from the marriage in the ANC. Damages for non-patrimonial loss (eg pain and suffering, emotional shock, disfigurement, loss of amenities of life and shortened life expectancy), inheritances and donations are automatically excluded from the marriage. When the marriage is dissolved the parties share in the gains of the marriage. The accrual is calculated by subtracting the commencement value (value of estate when the parties married) from the dissolution value (value of estate at divorce). The commencement value is adjusted by the consumer price index at the end of the marriage for purposes of calculating the accrual.

"Marriage is that relation between "two persons" in which the independence is equal, the dependence mutual, and the obligation reciprocal." Louis K. Anspacher