

## LOOKING WITH VIEW TO THE FUTURE IN YOUR MARRIAGE

You have met the right person and are ready for the next step. You have decided to get married! But before getting swept away with love, there are some very important things to consider. We cannot foresee the future, and although it is not preferred to discuss the eventuality of the marriage not yet entered into coming to an end, it is one of the most important conversations to have to ensure both parties are well informed of the legal consequences the marriage will have.

An Antenuptual Contract (ANC) is an agreement between two people who intends to get married. The purpose – to exclude the community of property and profit and loss as well as to include or exclude the accrual system from the marriage. Parties are free to include any provision in the contract, if it is not against nature, reason morality, public policy or prohibited by law etc.

Partners in a Civil Union can also conclude and register a valid ANC. This is after the Civil Union Act 17 of 2006 came into operation on 30 November 2006. The same legal consequences of a marriage contemplated in the Marriage Act 25 of 1961 and the provisions of the Matrimonial Property Act 88 of 1984 applies to a Civil Union marriage.

### Legal requirements:

- Contract must be entered into and signed by both parties in front of a Notary Public
- Parties must be legally competent (ie unmarried, of sound mind, duly assisted by guardian if a minor, etc)
- Must be signed in the presence of 2 witnesses
- Must be registered in the Deeds Office within 3 months of date of execution thereof
- The contract must be followed by a marriage to have force and effect

This contract may be adapted by agreement to suit the needs of both parties. The contract protects the other party from the spouse's creditors, protects against joint liability for debts and provides for an easier procedure at termination of marriage by death or divorce. It can protect any assets acquired by way of inheritance or donation, which could remain the separate property of the party.

To change your matrimonial property regime, one would need to make an application to Court, which is a very expensive application. Further also, given the high divorce statistics of South Africa, we advise you to please take a moment to consider taking legal advice and to understand and consider the various matrimonial property systems and the consequences it will have after you get married.