



KUILMAN MUNDELL & ARLOW

ATTORNEYS, NOTARIES AND CONVEYANCERS

WHY DO I NEED A MARRIAGE CONTRACT?

Many couples ask why it is necessary to enter into a contract if they love each other and never intend to separate. The simple reply is that an ante nuptial contract is the best way in which spouses can protect matrimonial assets from claims of third parties and creditors. This has nothing to do with the relationship between the spouses themselves. It simply enables spouses to structure the arrangement of the matrimonial assets to prevent their being attached to satisfy judgments against one of the spouses or on the insolvency of one of the spouses.

AM I BEING FAIR TO MY SPOUSE?

A properly drafted ante nuptial contract including a provision for the application of the accrual system should be fair to both parties. It should protect the assets of both spouses acquired before the marriage and ensure that on dissolution of the marriage (by death or divorce) the profit in the marriage is effectively shared.

AM I BEING FAIR TO MYSELF?

As indicated above, the preparation of an ante nuptial contract should be fair to both parties and they should be equally protected with the added benefit that the parties are able to protect themselves against the outside world. If you have assets which you acquired before the marriage you are entitled to keep these separate and if you receive or inherit assets from your family during the course of the marriage these can also be excluded from the operation of the accrual.

WHAT IS THE ACCRUAL?

The accrual is a system which is designed to ensure that the capital growth in a marriage is shared by both parties notwithstanding the fact that the assets are placed in the name of one party and notwithstanding the fact that one party may have made a career sacrifice for the benefit of the matrimonial home. In effect, the assets of the parties are valued at the commencement of the marriage and are valued on dissolution of the marriage (by death or divorce) and the difference in the growth in the value of the assets is shared between the parties.

WHAT DO I DO TO ENTER INTO A MARRIAGE CONTRACT?

The word "ante nuptial" derives from the Latin words *ante* and *nuptio* meaning "before" and "marriage". Consequently, it is necessary to enter into such a contract **BEFORE** you get married.

The contract can be drawn up by any attorney and needs to be executed before a notary public.

Once you and your fiancé have signed the contract before the notary you have legally entered into the contract. It then remains the responsibility of the attorney and the notary to effect registration of the contract within three months of the date of signature thereof.

WHAT DOES A MARRIAGE CONTRACT COST

The cost of a marriage contract varies from firm to firm and ranges from approximately R1000.00 to R3 000.00. When enquiring about costs one should enquire about any additional charges or disbursements. Kuilman Mundell and Arlow charge a standard all inclusive fee of R1870-00.

WHAT HAPPENS IF I DO NOT ENTER INTO A MARRIAGE CONTRACT?

If you simply marry without entering into a marriage contract you will be married in community of property. All of the pre-marriage assets of yourself and your spouse will be pooled and will be subject to attachment by third parties or creditors in the event of a judgment debt or insolvency of one of the spouses. It would not therefore be possible to protect separate assets of individual spouses in such circumstances.

CAN I REGISTER AN ANTE NUPTIAL CONTRACT AFTER WE HAVE MARRIED?

It is possible to register a post nuptial registration of an ante nuptial contract but only on the authority of an order of the High Court. This entails a formal application to the High Court, advertisement in the press and the approval of all of your creditors. The minimum cost of such an application would be in the region of R10 000.00 – R12 000.00 and the granting of the order would be dependent on the attitude of your creditors at the time.

If any of your creditors felt they would be prejudiced a Court may not grant such an order.

Should you have any further queries please do not hesitate to contact Bernadette or Patrick at 011 465 4151 or bernadette@kmattorneys.co.za