

# The implications of my matrimonial regime on the devolution of my estate

By Nicolene Rajah (Candidate Attorney)

Although in South Africa our Constitution allows us the freedom of testation, matrimonial property regimes place legitimate limitations on such rights.

The Wills Act provides that upon divorce, if a bequest is made to a divorced spouse and should the testator die within three months of the divorce, the divorced spouse is deemed to have predeceased the testator, and the testator's alternative heirs inherit. If a will is not amended within three months and a testator dies thereafter, it is considered that the testator intended the divorced spouse to benefit and the divorced spouse will receive their benefit as stipulated in the will. It is therefore very important to update your will in the event that you divorce your spouse.

Being married in community of property results in both spouses owning everything in undivided and equal shares. Upon death, the executor administers the joint estate of both spouses, and the surviving spouse by operation of law, receives an undivided half share of the estate. The remaining half share is the share which the deceased spouse's heirs will benefit from in terms of the will of the deceased spouse.

Only the banking accounts of the deceased spouse are frozen once the bank is notified of the death of the deceased. The surviving spouse's banking accounts are not frozen.

It is possible in a will to provide that any inheritance which an heir receives is excluded from such joint estate as the heir may have. In such an event, such an inheritance is excluded from the heir's joint estate upon his/her death.



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Being married by an antenuptial contract without accrual results in both spouses having their own separate estates. If you are married by antenuptial contract without accrual, and you are the first dying spouse, only your assets are administered by your executor.

Being married by antenuptial contract including the accrual system has the effect that you have separate estates but you agree that what you accumulate during your marriage is shared. It is possible in your antenuptial contract to have a commencement value at the outset of the marriage which is then excluded from the accrual, or to exclude specific assets from the accrual, for example a house/a business interest. Upon death, the estate of the spouse with the smallest growth has a claim against the estate of the spouse with the greater growth.

Contact Margaret McCullough on 033-8459700 should you require clarity on the effects of your matrimonial regime on your estate.



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