Marital Regimes

By Naseeba Sadak

Getting Married Again? Have You Discussed Your Finances?

How Will You Protect Your Assets?

Finding companionship and love again later in life is a truly wonderful thing. Planning a second wedding brings joy and excitement. But alongside planning the guest list and choosing the cake, it's very important, especially the second time around, to think about the financial side. One key area is understanding something called your "marital regime."

What is a Marital Regime?

A marital regime sets out the financial rules for your marriage. It dictates how your money, property and even your debts are handled during the marriage and what happens if the marriage ends, either through divorce or death.

In South Africa, if you get married without signing an agreement *before* the wedding, you are automatically married **'in community of property'**. This means everything you both owned *before* the marriage, and everything you earn or acquire *during* the marriage, falls into one big, shared pot (called a joint estate). You share assets, but you also share debts equally.

Many couples, especially those marrying later in life or for a second time, prefer to keep their finances separate. They can do this by signing a contract *before* the wedding, called an **Antenuptial Contract (ANC)**. This allows you to be married **'out of community of property'**. In an ANC, you can choose to either keep everything separate (without accrual) or to share the *growth* in your assets during the marriage (with accrual).

How Does Your First Marriage Affect Your Second?

Your previous marriage ended, and the financial arrangements from that time were finalised according to *that* marriage's regime. However, the assets or debts you *personally* came away with from that first marriage are what you could bring into your *second* marriage. This is crucial. If you marry your new partner 'in community of property' (the default without an ANC), those assets (and any debts) automatically become part of the new joint “pot”, shared with your new spouse.

This can become complicated, especially if you have children from your first marriage. You might want certain assets kept aside for them, or you might want to be protected from your new spouse's debts prior to you meeting him/her.

For a second marriage, carefully considering your marital regime is vital.

- Think about what assets you each bring into the marriage.
- Consider any debts you both might have.
- Discuss how you want to provide for children from previous relationships.

Before you walk down the aisle again, sit down with an Attorney who specialises in family law. Taking this step gives you peace of mind, ensuring your new marriage starts on a clear and fair financial footing, allowing you to fully enjoy this happy new chapter.

If you need any further information or assistance, please contact our Family Law department at J Leslie Smith Attorneys, Whyona Sithapersad on 033 845 9700 or email on whyona@jleslie.co.za or her Secretary: tanya@jleslie.co.za