

PERSONALISED LEGAL ASSISTANCE

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Dear friends, colleagues and clients

SONNENBERG & ASSOCIATES PROPERTY & LEGAL ADVICE NEWSLETTER # 4:

1. Legal Quotes

"Like Solomon, I can only but wonder how to measure the worth of a good wife." [Kriegler J. in *Beaumont v Beaumont* 1985 (4) SA 171 (W)]

"Ah, yes, divorce... from the Latin word meaning to rip out a man's genitals through his wallet." [Robin Williams]

2. Overheard in Court

Attorney: "Are you married?"

Witness: "No. I'm divorced."

Attorney: "What did your husband do before you divorced him?"

Witness: "A lot of things I didn't know about."

3. Relevant South African quote

"We have set a growth target of 5% by 2019. To achieve this we will embark on various measures and interventions to jump-start the economy." [President Jacob Zuma, State of the Nation Address, 17 June 2014]

4. In lieu of the World Cup, soccer quotes

The England team visited an orphanage in Brasil today. "It's heartbreaking to see their sad little faces with no hope," said Jose, aged 6.

"Statistics are like miniskirts: They give you good ideas but hide the important things." [Ebbe Skovdahl, Danish Football Manager]

"Winning doesn't really matter as long as you win." [Vinny Jones]

"Is the Pope Catholic? No, I'm serious, is he? I really need to know." [David Beckham, when asked if he might be moving to AS Roma]

5. Accrual and the South African Matrimonial Regime

If you have not executed an antenuptial contract when you get married in South Africa, you are married in community of property. When married in community of property, the spouses have one joint estate, and are liable for each other's debts.

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By entering into an antenuptial contract prior to marriage (this contract must be registered in the deeds registry having jurisdiction within three months of the marriage ceremony), you exclude liability for your spouses' debt (the wife and the husband have two separate estates), whether the debt was incurred before or during the marriage.

The terms of the antenuptial contract you enter into will determine whether the marriage is subject to the accrual system or not. If the antenuptial contract includes the accrual, this means you share in the accrual of your spouse's estate during the marriage. If the accrual system is specifically excluded, the effect of this is that you will not share in your spouses' increase of wealth during the marriage, unless you benefit in terms of his/her will when he/she passes on.

The accrual is the difference between the commencement value and the termination value (either by death or divorce) of the respective spouses' estates.

Contrary to popular belief, the accrual is not determined by simply dividing the spouses' estates: the estate of the spouse which has grown more during the marriage is obliged to pay the estate of the spouse that has grown less (or not at all), half the difference between the respective accruals (for example: if A's estate has accrued by R100 and B's by R20, the A is obliged to pay B's estate half of the difference between the accruals. In this case $R100 - R20 / 2 = R40$).

All assets that either spouse has brought into the marriage, remain the exclusive property of the owner (except where the owner donates the asset to his/her spouse in terms of the antenuptial contract, or donates it to his/her spouse during the marriage). Similarly, if such an asset is sold during the marriage, the monetary value of the sold asset remains that of the owner exclusively. (This is the legal situation: practically spouses can have joint bank accounts).

All inheritances, legacies or donations between spouses are also left out in the calculation of accrual.

Until the marriage is terminated by death or divorce, the accrual system has no effect whatsoever. Only when the marriage is terminated, will an accounting exercise be done to determine what is owed to either spouse in terms of the accrual system.

In the case of the death of one of the spouses, if the surviving spouse is owed money in terms of the accrual, this will be paid out by the executor as a "first draw". This is very helpful to the surviving spouse, as the deceased's bank accounts will ordinarily be frozen until the estate is wound up.

In the case of divorce, a consent paper (where the spouses contractually determine the financial consequences of their marriage, as well as making provision for various other things such as custody and maintenance of any children born of the marriage) takes precedence over the terms of the antenuptial contract.

I recommend consulting with a family attorney (in the case of divorce) or an estates specialist (in the case of the death of a spouse).

5. Transfer duty in the case of the death of a spouse or a divorce (effective since July 2006)

A surviving or divorced spouse who acquires a property (or a portion thereof) from his/her deceased or divorced spouse is exempt from paying transfer duty.

To qualify for this exemption

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- The transfer must be as a consequence of the dissolution of the marriage by death (i.e in terms of the deceased's will) or divorce (in terms of the divorce order), and
- The sole ownership in the property (or portion thereof) which had been registered in the name of the deceased or divorced spouse must be acquired by the surviving spouse or other divorced spouse.

Kind regards



Fritz Sonnenberg

(C) 083 251 5451