

ASHLEY SLAMAT

— ATTORNEYS AT LAW —

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**MATRIMONIAL PROPERTY ACT
88 OF 1984**

Section 1: Definitions

“joint estate” – is the joint estate of a husband and wife married in community of property.

“separate property” – property which does not form part of the joint estate.

Section 2 – 10: The Accrual system

- A marriage concluded out of community of property with an antenuptial contract by which community of property as well as community of profit and loss is excluded is subjected to the accrual system.
- At the dissolution of the marriage by death or divorce the accrual from the spouse which is least gets subtracted from the accrual from the spouse which is more, and the difference gets divided between the two spouses. If the one spouse died his/her estate gets a claim for half of the difference between the two accruals against the other party's estate.

The following will be left out of the calculation of the accrual:

- Amounts accrued to the estate because of damages other than damages for patrimonial loss (also damages recovered from the other spouse for bodily injuries suffered by him/her and attributable wholly or partly to the fault of the other spouse and these damages do not fall into the joint estate),
- Any asset which is excluded from the accrual system in terms of the antenuptial contract,
- The total value of each spouses' estate at the commencement of the marriage,
- Any testamentary disposition, donation *mortis causa* or succession out of the estate in terms of the law of intestate succession.
- Any inheritance, legacy, donation accrued during the marriage or asset which he/she acquired by virtue of possession or former possession of such inheritance, legacy or donation.

The net commencement value of a spouse's estate will be nil if his/her liabilities exceeds his assets or the value was not declared in an antenuptial contract and not declared, certified by a notary, in a statement within 6 months after the commencement of the marriage.

The division of the accrual may also be ordered or changed by an order of court and the rights to share in the accrual may be forfeit, wholly or in part.

Section 11 – 13: Abolition of Marital Power

This Act repeals and abolishes the common law rule that a husband obtains marital power over the person and property of the wife. This Act will apply to every marriage in community of property irrespective of the date on which the marriage was entered into.

Section 14 – 17: Marriages in Community of Property

- The spouses in a marriage in community of property will both have the same powers regarding the disposal of assets of the joint estate, contracting of debts which lie against the estate and management of the joint estate.
- A spouse in a marriage in community of property can perform any juristic act with regards to the joint estate without the consent of the other spouse.
- Section 15(2) describes which actions a spouse in a marriage in community of property can't do.
- According to Section 16 a Court may also give consent to a spouse if the other spouse withholds consent from him/her, can't give consent or withholds consent unreasonably.
- A spouse may not institute or defend legal proceedings without the written consent of the other spouse, except to defend his own property, for the recovery of damages, which is not patrimonial losses but by reason of commission of a delict against him/her, or regarding a matter relating to his profession, trade or business.
- If the necessary consent was not obtained by a spouse, the court will make an order which the court deems fit.
- The application for the surrender of a joint estate must be made by both spouses and an application for sequestration of a joint estate must be made against both spouses. Both spouses must be sued together for debt recoverable from the joint estate.

Section 18 – 38: General provisions

- A court may order the division of a joint estate upon the application of that spouse, if the court is satisfied that that person's interest will be seriously

prejudiced by the conduct or proposed conduct of the other spouse, and that other persons will not be prejudiced by the division.

- Parties can jointly apply to change the matrimonial property system which apply to their marriage with a notarial contract if there are sound reason for it, sufficient notice to all relevant parties and if no other person will be prejudiced by this action.
- Spouses married out of community of property are liable to contribute to necessities for the joint household *pro rata* according to their financial means. The spouse who contributed more towards the joint household before the commencement of this Act will have a right of recourse against the other spouse in regards to the portion which was contributed more than the other spouse.
- Parties married out of community of property is also jointly and severally liable to third parties for all debts incurred by either of them in respect of necessities for the joint household.
- The court will have the right to dissolve a marriage, and make an order regarding the division of the matrimonial property, in which a minor entered without the proper consent of their parents, guardian of commissioner of child welfare.