

## Legal Options when entering a civil union

Dear Persons On the Eve of Union,

Congratulations in this exciting season of your lives! And consolations for all of the sometimes stressful to-do lists it brings.

Among the many important matters you will need to consider are the legal options available to you when facing a civil union. Couples can find it awkward to deal with this matter as it is easy to feel that such a discussion indicates a lack of trust and commitment. How can you choose rings and imagine the end of your union at the same time?! But the reality is that all unions end in a legal sense, even if we think our love will go on forever.

Also, an Antenuptial Contract is frequently well advised for responsible financial management during a union. In short, the possibilities that you do not manage in your planning can end up managing you should they become reality. Since the legal structure of a union is extremely expensive and intricate to alter after the event, it is critical that couples consider this matter seriously.

To help you begin thinking about the legal options available to you, I have prepared a brief description of these options in very simple terms. This is by no means a thorough legal definition, but merely a jargon free thumbnail to help you on your way. It is important that you obtain legal assistance from a duly admitted Notary Public.

### **1. In Community of Property**

If you do not sign a specially prepared contract before your union, your union will be deemed to be "in community of property". This means that everything you each have (assets and debts) before your union and which you acquire during your union whether by remuneration, inheritance (unless expressly excluded), gifts or otherwise is shared by both of you.

The advantage of this system is that it treats both of you equally.

The disadvantages are that as both spouses are jointly and severally liable (if one of you has or gets into debt or even becomes insolvent, the other spouse will also be held responsible for what is owed). This is obviously a disadvantage if either or both of you runs your own business (or may do so one day). Also, neither spouse may sell or give away anything of value without the written consent of the other.

To overcome these disadvantages, it is a good idea to consider the out of community of property option. To do so, you must sign a specially prepared contract before your union. This is called an Antenuptial Contract, or ANC (a before union contract). There are two different types of ANCs and both need to be prepared by and signed in front of a Notary Public before you are married.

## 2. Out of Community of Property Without Accrual

Each of you keeps separate ownership of everything (assets and debts) which you bring into the union and acquire during the union.

The advantage of this system is that if one of you gets into financial trouble then the other one is able to retain his/her assets and you are not both dragged down by financial misfortune.

The disadvantage of this system is that it leads to an unequal distribution of assets. Non-monetary contributions (such as looking after a home) are not compensated.

To overcome this disadvantage, you may want to consider the third option:

## 3. Out of Community of Property With the Accrual System

This system combines the best of the other two and avoids the disadvantages of both. It is based on the idea that both of you will contribute equally to the union and should therefore share equally in the benefits gained during the union. The Accrual System recognises emotional and physical support as contributions in addition to financial ones. On the other hand, each of you is protected from the debts (& possible insolvency) of the other.

If you choose this system, you will each need to list your assets and debts and note anything of special sentimental or financial value to you. (All inheritances, legacies and donations made to either of you before and during the union are automatically excluded and belong to that person alone.) You may either exclude certain assets or declare your total worth. It is often a good idea to do both. Things that increase in value on an annual basis (eg property) can be cited individually. Things like furniture and motor vehicles can be added up and an overall value assigned to them. These values do not need to be exact, but must simply be a figure that both parties feel comfortable with.

After these lists have been recorded and your contract signed, the total financial gain made by both of you together is shared between both of you equally at the end of your union.

### What documents you will need to give to the Notary Public:

When meeting with the Notary, you will need to take your green South African Identity Books. If you are not a South African citizen, you should take your passport. If you choose Option 3 you should also take the lists described in that section.

My fee for the antenuptial contract is normally **R2 045.00**. The cost is amount is made up of a 30 minute consultation (R400.00), a fee for drafting of the contract (R750.00), the Deeds Office fee for processing the contract (R95.00) and my fee for attending at the Deeds Office three times to lodge the documents, hand them in for registration, and execute them (R800.00).

Please contact me if I can help you navigate your way through this potentially tumultuous sea.

Yours faithfully, Michelle Light

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