

How does marriage affect your property rights?

Marriage is an undeniably life-changing event, and not just in the emotional sense - it alters the way we manage things like finances and property ownership too.

The contractual side of tying the knot may not be particularly romantic, but it can have far-reaching effects on your future, and should definitely be a part of your discussions before you say "I do".

"Property is often the most valuable asset a person will own in their lifetime," says Tony Clarke, Managing Director of the Rawson Property Group. "It's also pretty central to most marriages - the marital home - but that doesn't necessarily mean ownership is always shared equally between spouses. It really depends on your marital contract, and can be affected by whether the purchase was made before or after the marriage."

With more and more couples waiting until later in life to get married, it's not uncommon for one or both parties to already own property before the wedding. They may even share ownership of a property, and have a contract in place to define their ownership rights and responsibilities. According to Clarke, however, these contracts may be superseded by a marriage contract in some situations, and couples can't just assume the same agreement will carry through when they become spouses.

"All marriages are contractual," says Clarke, "whether you sign an anti-nuptial or not, and the type of contract you choose determines how the ownership of assets is assigned to each spouse during the marriage and in the event of death or divorce."

In South Africa, the default marital contract is in community of property, and if you don't have an anti-nuptial drawn up before the wedding, this is the contract that will govern your marriage.

"When a couple marry in community of property, they agree to share all marital and pre-marital assets equally," says Clarke. "That means both spouses will be equal and joint owners of any property bought before or after the marriage, regardless of whose name is on the title deed. They will also both need to consent to any future property sales or purchases."

Most modern couples choose not to be married in community of property, however. Rather, they choose between marriage by anti-nuptial with or without accrual.

"Accrual basically means anything bought or earned during the marriage - otherwise known as a marital asset - will be divided equally between the spouses should the marriage end for any reason," says Clarke. "That means any property bought after the marriage will be considered jointly-owned in the event of death or divorce, unless it has been specifically excluded in the contract. Assets bought or earned before the marriage, however - including property - will belong to the original owner, alone. If a couple jointly owns a property before marriage, the original ownership division should be specified in the anti-nuptial agreement. That way, if the marriage should end, each spouse retains the shares agreed upon when they made the purchase."

Marriages by anti-nuptial without accrual do not share ownership of any marital or pre-marital assets. "In this case, whoever bought the property, owns the property," says Clarke, "but things can get a little complicated if both spouses contribute to the cost of ownership."

Marriages by anti-nuptial, whether with or without accrual, do not require consent from both spouses for property purchases or sales. This is because all property remains individually

owned until the dissolution of the marriage, at which point the assets are divided according to the agreement in place.

"There is no, one, right way to handle property ownership when you marry," says Clarke. "It's something you need to discuss with your partner, and consider all your options to find the best fit for you. It's always a good idea to consult with a lawyer if you have any questions, and be open and honest about your hopes, expectations and beliefs."

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