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The institution of marriage is an emotional matter and also a contractual relationship. A marriage may be concluded in three ways. It is either (1) in community of property (where all assets and debts are shared equally by both spouses), (2) out of community of property without the accrual system (a complete separation of assets and debts of the spouses resulting in two separate estates) and (3) out of community of property with the accrual system (see the discussion below). Only a Notary is authorised to attend to an antenuptial contract.

The out of community of property with the accrual system (the third option discussed above) is a contract which operates on the following basis. The “*accrual*” is the term used for the value with which the estates grow during the subsistence of the marriage. It is thus the amount by which the net value of the estate of one of the spouses at the dissolution of the marriage exceeds the net value of that estate at the commencement of that marriage. A spouse will thus have a claim against the other spouse for 50% of the difference between the net values (“*accrual*”), calculated between the commencement and end values. Everything accrued during the marriage is shared accordingly in the event of death or divorce.

The antenuptial contract must be signed before date of marriage and a Notary (an attorney who is further qualified and admitted to the High Court as a Notary) has to certify the document in the presence of the parties and two independent witnesses. The contract is thereafter lodged and registered at the Deeds Office in a systematic step by step fashion. When there is no antenuptial contract the marriage is automatically within community of property. The High Court must in such an instance be approached in order to obtain permission to draft an antenuptial contract, thereby changing the matrimonial system.

We look forward to assist you in drafting and finalizing your contract. You may contact us at 0729443438 or at [law@theffefirm.net](mailto:law@theffefirm.net) We are based in Randburg in Gauteng Province.

