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Ninety One

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Marriage and money: what you need to know about your marital regime

Ask most women about their wedding day, and they'll tell you every detail: the dress, the flowers, the first dance. Ask about the marital regime they signed that same day, and it's often a different story.

Yet that one decision shapes what you own, what you're entitled to, and how visible you stay in your own financial life, married or not.

This August, the Ninety One Women & Investing Seminar is putting that conversation on the table. Here's a breakdown of the main marital regimes in South Africa, so you know exactly what you're agreeing to, and what questions to ask before you say "I do."

1 In community of property

This is the **default regime** for civil marriages if no antenuptial contract (ANC) is signed before the wedding.

- Spouses' estates merge into a single joint estate from the date of marriage.
- Both spouses have equal, undivided shares in all assets and liabilities, including those brought into the marriage and those acquired during it.
- Both spouses generally need each other's consent for major transactions (e.g., selling immovable property, taking out a loan, standing surety).
- On divorce or death, the joint estate is generally split 50/50, regardless of who "earned" or contributed what.
- Downside: one spouse's debt exposure can affect the other, since creditors can claim against the joint estate.

2 Out of community of property, excluding accrual

Requires an ANC signed before marriage that explicitly excludes the accrual system.

- Each spouse maintains a separate estate before and during the marriage.
- Assets, debts, and growth in wealth acquired during the marriage remain separate.
- On divorce, there is generally no sharing of assets accumulated during the marriage unless the couple has entered into separate agreements. A court may, however, order one spouse to transfer assets to the other, whether the marriage ends in divorce or in death, where the spouse claiming contributed to building the other's estate.
- Offers the most financial independence and asset protection, but can leave a financially weaker spouse (e.g. one who didn't work or earned less) without a claim to wealth built during the marriage.

3 Out of community of property, with accrual

Also requires an ANC, but the accrual system is not excluded (this is actually the default if you sign an ANC and say nothing about accrual).

- Estates stay separate during the marriage, similar to option 2.
- However, on dissolution (divorce or death), the spouse whose estate grew the least during the marriage has a claim against the other spouse for half the difference in growth (accrual) of the two estates.

- The net value of each estate at the date of marriage, adjusted for inflation, certain exclusions specified in the ANC, as well as inheritances and damages for pain, and suffering, are normally excluded from the accrual calculation. Growth on pre-marital assets during the marriage does form part of the accrual.
- Seen as a middle ground: protects pre-marital assets and shields spouses from each other's separate debts, while still recognising joint contribution to wealth built during the marriage.

A few other categories

- **Customary marriages** (under the Recognition of Customary Marriages Act): by default, treated as in community of property unless an ANC specifies otherwise. Polygamous customary marriages have specific rules for how each spouse's share is determined.
- **Civil unions** (under the Civil Union Act, which covers same-sex and opposite-sex couples who choose this route instead of the Marriage Act): the same three marriage-regime choices as above apply.
- **Muslim and other religious marriages:** historically not recognised as valid under South African law unless also registered as a civil or customary marriage. Muslim marriages are now recognised for divorce purposes, and a court dissolving a Muslim marriage has the same powers to redistribute assets and order forfeiture as in any other divorce. This is still an evolving area, so if this is relevant to your situation, it's worth checking the current legal status.

One practical note: choosing between these requires signing (or not signing) an ANC before the wedding, in front of a notary, and registering it in the Deeds Office within three months. It can't be done retroactively without a court application to change matrimonial regimes.

None of this is about planning for the worst; it's about understanding what you've already agreed to or deciding what you want going forward. Knowing your matrimonial regime is one small, practical way to stay informed about your own financial future, married or not.

These decisions rarely stand alone; they shape your estate planning, your risk cover, and how you build wealth as a couple. An independent financial advisor can help you see the fuller picture and work through what your regime means for your specific situation, alongside an attorney or notary for the legal specifics of signing or changing an ANC.

Important information

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