



11 April 2019

HOW TO CHANGE YOUR MARITAL REGIME

The excitement surrounding entering into a marriage can often be overwhelming and lead to the spouse's judgment being clouded when having to deal with the legal aspects of marriage. In our law, it is of extreme importance to enter into an ante-nuptial contract prior to a marriage, failing to do so will automatically render your marriage in community of property.

The question often arises that if you had no knowledge of the different matrimonial property regimes prior to your marriage and what the consequences of the matrimonial property regimes would entail, is there no option available that you can change your matrimonial property regime from "in" community of property to "out" of community of property? The good news is that it is indeed possible to change your matrimonial property regime by registering a Notarial Contract in terms of Section 21(1) of the Matrimonial Property Act 88 of 1984. This is also the situation if your Ante-Nuptial Contract was not registered timeously, you can apply to the court for permission for late registration of your contract in terms of Section 88 of the Deeds Registries Act.

To change the matrimonial property regime the parties will have to make a joint application to the High Court requesting that leave be granted to sign the Notarial Contract, which after the registration thereof will regulate the matrimonial property regime. If neither of the spouses are insolvent, or have any judgments against their names or any pending legal action against them, then the application will usually be granted. However, if any of the aforementioned is not the case, the possibility exists that the creditors of the spouses may object to the change in the matrimonial property regime.

The Matrimonial Property Act provides for the following requirements to be met before spouses can amend their matrimonial property regime:

- There must be sound reasons for the proposed change;
- There must be sufficient notice of the proposed change to all creditors and the Registrar of Deeds;
- The court must be satisfied that no other person will be prejudiced by the change.

What will qualify as a well-founded reason to be accepted by the High Court? The following can be regarded as examples of well-founded reasons but is not a closed list:

- Income tax considerations and financial risks;
- Previous ignorance about the legal position before their marriage;
- Parties who were married abroad;
- Where a different matrimonial property dispensation was in force, etc.

Once the court is satisfied that the requirements, as set out above, have been met, it may order that the existing matrimonial property regime may no longer apply to the marriage between the parties and authorise the parties to enter into a Notarial contract by which the future matrimonial property regime is to be regulated on such conditions as the court may deem fit.

As is evident from the above-mentioned it is possible to change your matrimonial property regime after you have entered into the marriage. However, it is important to note that it can be costly as it includes an application to the High Court, which includes legal fees, notice to the Registrar of Deeds and the costs of the publishing notices in two newspapers as well in as the Government Gazette. It is therefore advisable to speak to an attorney prior to your marriage to be fully informed of the different marital regimes and the consequences associated therewith.

Article by **Michelle Mentz**, candidate attorney at Malan Lourens Viljoen Inc.

This article is a general information sheet and should not be used or relied on as legal or other professional advice. No liability can be accepted for any errors or omissions nor for any loss or damage arising from reliance upon any information herein. Always contact your legal adviser for specific and detailed advice.