

(17 February 2009 – to date)

[This is the **current** version and applies as from **17 February 2009**, i.e. the date of commencement of section 21 of the Judicial Matters Amendment Act 66 of 2008 – **to date**]

## **MATRIMONIAL PROPERTY ACT 88 OF 1984**

*Government Notice 1517 in Government Gazette 9322, dated 25 July 1984. Commencement date: 1 November 1984 [Proc. R158, Gazette No. 9413, dated 7 September 1984].*

### **as amended by:**

*Matrimonial Property Amendment Act 91 of 1986 – Government Notice 1864 in Government Gazette 10426, dated 10 September 1986. Commencement date: 10 September 1986.*

*Intestate Succession Act 81 of 1987 – Government Notice 2294 in Government Gazette 10973, dated 14 October 1987. Commencement date: 18 March 1988 [Proc. No. 42, Gazette No. 11188, dated 18 March 1988].*

*Marriage and Matrimonial Property Law Amendment Act 3 of 1988 – Government Notice 414 in Government Gazette 11171, dated 4 March 1988. Commencement date: 2 December 1988 [Proc. No. 203, Gazette No. 11595, dated 25 November 1988].*

*Insolvency Amendment Act 122 of 1993 – Government Notice 1289 in Government Gazette 14988, dated 20 July 1993. Commencement date: 1 September 1993 [Proc. R82, Gazette No. 15102, dated 1 September 1993].*

*General Law Fourth Amendment Act 132 of 1993 – Government Notice 1852 in Government Gazette 15160, dated 6 October 1993. Commencement date: 1 December 1993 [Proc. R123, Gazette No. 15308, dated 1 December 1993].*

*Guardianship Act 192 of 1993 – Government Notice 5 in Government Gazette 15398, dated 5 January 1994. Commencement date: 1 March 1994 [Proc. R33, Gazette No. 15527, dated 1 March 1994].*

*Justice Laws Rationalisation Act 18 of 1996 – Government Notice 632 in Government Gazette 17129, dated 19 April 1996. Commencement date: 1 April 1997 [Proc. R23, Gazette No. 17849, dated 12 March 1997].*

*National Credit Act 34 of 2005 – Government Notice 230 in Government Gazette 28619, dated 15 March 2005. Commencement date: 1 June 2006 [Proc. 22, Gazette No. 28824, dated 11 May 2006].*

*Judicial Matters Amendment Act 66 of 2008 – Government Notice 166 in Government Gazette 31908, dated 17 February 2009. Commencement date: 17 February 2009.*

Prepared by:

In partnership with:

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:-

**GENERAL EXPLANATORY NOTE:**

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with solid line indicate insertions in existing enactments.

**ACT**

**To amend the matrimonial property law and to provide for matters connected therewith.**

*(Afrikaans text signed by the State President.)*

*(Assented to 3 July 1984.)*

BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:

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In partnership with:

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Prepared by:

In partnership with:

## 1. Definitions

In this Act, unless the context indicates otherwise –

“**banking institution**” means a banking institution as defined in section 1 of the Banks Act, 1965 (Act No. 23 of 1965);

“**building society**” means a building society as defined in section 1 of the Building Societies Act, 1965 (Act No. 24 of 1965);

“**court**” means a provincial or local division of the Supreme Court of South Africa or a divorce court instituted under section 10 of the Black Administration Act, 1927, Amendment Act, 1929 (Act No.9 of 1929), and includes, for the purposes of section 16, a judge in chambers, and, for the purposes of section 16(1), a magistrate’s court which has jurisdiction in the matter concerned;

“**financial institution**” means a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984);

“**joint estate**” means the joint estate of a husband and a wife married in community of property;

“**listed securities**” means listed securities as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No.1 of 1985);

*(Definition of “listed securities” amended by section 4 of Act 18 of 1996)*

“**separate property**” means property which does not form part of a joint estate.

## CHAPTER I ACCRUAL SYSTEM

### 2. Marriages subject to accrual system

Every marriage out of community of property in terms of an antenuptial contract by which community of property and community of profit and loss are excluded, which is entered into after the commencement of this Act, is subject to the accrual system specified in this Chapter, except in so far as that system is expressly excluded by the antenuptial contract.

### 3. Accrual system

- (1) At the dissolution of a marriage subject to the accrual system, by divorce or by the death of one or both of the spouses, the spouse whose estate shows no accrual or a smaller accrual than the estate of the other spouse, or his estate if he is deceased, acquires a claim against the other spouse or his

estate for an amount equal to half of the difference between the accrual of the respective estates of the spouses.

- (2) Subject to the provisions of section 8(1), a claim in terms of subsection (1) arises at the dissolution of the marriage and the right of a spouse to share in terms of this Act in the accrual of the estate of the other spouse is during the subsistence of the marriage not transferable or liable to attachment, and does not form part of the insolvent estate of a spouse.

#### 4. Accrual of estate

(1)

(a) The accrual of the estate of a spouse is the amount by which the net value of his estate at the dissolution his marriage exceeds the net value of his estate at the commencement of that marriage.

(b) In the determination of the accrual of the estate of a spouse –

(i) any amount which accrued to that estate by way of damages, other than damages for patrimonial loss, is left out of account;

(ii) an asset which has been excluded from the accrual system in terms of the antenuptial contract of the spouses, as well as any other asset which he acquired by virtue of his possession or former possession of the first-mentioned asset, is not taken into account as part of that estate at the commencement or the dissolution of his marriage;

(iii) the net value of that estate at the commencement of his marriage is calculated with due allowance for any difference which may exist in the value of money at the commencement and dissolution of his marriage, and for that purpose the weighted average of the consumer price index as published from time to time in the *Gazette* serves as *prima facie* proof of any change in the value of money.

- (2) The accrual of the estate of a deceased spouse is determined before effect is given to any testamentary disposition, donation *mortis causa* or succession out of that estate in terms of the law of intestate succession.

#### 5. Inheritances, legacies and donations excluded from accrual

- (1) An inheritance, a legacy or a donation which accrues to a spouse during the subsistence of his marriage, as well as any other asset which he acquired by virtue of his possession or former possession of such inheritance, legacy or donation, does not form part of the accrual of his estate, except in so far as the spouses may agree otherwise in their antenuptial contract or in so far as the testator or donor may stipulate otherwise.

- (2) In the determination of the accrual of the estate of a spouse a donation between spouses, other than a donation *mortis causa*, is not taken into account either as part of the estate of the donor or as part of the estate of the donee.

## 6. Proof of commencement value of estate

- (1) Where a party to an intended marriage does not for the purpose of proof of the net value of his estate at the commencement of his marriage declare that value in the antenuptial contract concerned, he may for such purpose declare that value before the marriage is entered into or within six months thereafter in a statement, which shall be signed by the other party, and cause the statement to be attested by a notary and filed with the copy of the antenuptial contract of the parties in the protocol of the notary before whom the antenuptial contract was executed.
- (2) A notary attesting such a statement shall furnish the parties with a certified copy thereof on which he shall certify that the original is kept in his protocol together with the copy of the antenuptial contract of the parties or, if he is not the notary before whom the antenuptial contract was executed, he shall send the original statement by registered post to the notary in whose protocol the antenuptial contract is kept, or to the custodian of his protocol, as the case may be, and the last-mentioned notary or that custodian, shall keep the original statement together with the copy of the antenuptial contract of the parties in his protocol.
- (3) An antenuptial contract contemplated in subsection (1) or a certified copy thereof, or a statement signed and attested in terms of subsection (1) or a certified copy thereof contemplated in subsection (2), serves as *prima facie* proof of the net value of the estate of the spouse concerned at the commencement of his marriage.
- (4) The net value of the estate of a spouse at the commencement of his marriage is deemed to be nil if –
  - (a) the liabilities of that spouse exceed his assets at such commencement;
  - (b) that value was not declared in his antenuptial contract or in a statement in terms of subsection (1) and the contrary is not proved.

## 7. Obligation to furnish particulars of value of estate

When it is necessary to determine the accrual of the estate of a spouse or a deceased spouse that spouse or the executor of the estate of the deceased spouse, as the case may be, shall within a reasonable time at the request of the other spouse or the executor of the estate of the other spouse, as the case may be, furnish full particulars of the value of that estate.

## 8. Power of court to order division of accrual

Prepared by:

In partnership with:

- (1) A court may on the application of a spouse whose marriage is subject to the accrual system and who satisfies the court that his right to share in the accrual of the estate of the other spouse at the dissolution of the marriage is being or will probably be seriously prejudiced by the conduct or proposed conduct of the other spouse, and that other persons will not be prejudiced thereby, order the immediate division of the accrual concerned in accordance with the provisions of this Chapter or on such other basis as the court may deem just.
- (2) A court making an order under subsection (1) may order that the accrual system applicable to the marriage be replaced by a matrimonial property system in terms of which accrual sharing as well as community of property and community of profit and loss are excluded.
- (3) When an order is made under subsection (2), the registrar shall send a copy thereof to the registrar of deeds concerned, who shall cause an appropriate reference to the new matrimonial property system to be made on the registry duplicate of the antenuptial contract concerned and on every copy thereof tendered to him for endorsement.
- (4) A registrar of deeds who receives notice of a new matrimonial property system in terms of subsection (3), shall notify all other registrars of deeds accordingly and furnish each of them with a copy of the court order, and every registrar of deeds so notified shall cause an appropriate reference to the new matrimonial property system to be endorsed on the copy, if any, of the antenuptial contract concerned filed in his registry and on every copy thereof tendered to him for endorsement.

## **9. Forfeiture of right to accrual sharing**

The right to share in the accrual of the estate of a spouse in terms of this Chapter is a patrimonial benefit which may on divorce be declared forfeit, either wholly or in part.

## **10. Deferment of satisfaction of accrual claim**

A court may on the application of a person against whom an accrual claim lies, order that satisfaction of the claim be deferred on such conditions, including conditions relating to the furnishing of security, the payment of interest, the payment of instalments, and the delivery or transfer of specified, assets, as the court may deem just.

## **CHAPTER II ABOLITION OF MARITAL POWER**

## **11. Abolition of marital power**

- (1) The common law rule in terms of which a husband obtains the marital power over the person and property of his wife is hereby repealed.

- (2) Any marital power which a husband has over the person and property of his wife immediately prior to the date of coming into operation of this subsection, is hereby abolished.
- (3) The provisions of Chapter III shall apply to every marriage in community of property irrespective of the date on which such marriage was entered into.
- (4) The abolition of the marital power by subsection (2) shall not affect the legal consequences of any act done or omission or fact existing before such abolition.

*(Section 11 substituted by section 29 of Act 132 of 1993)*

## **12. Effect of abolition of marital power**

Subject to the provisions of this Act, the effect of the abolition of the marital power is to do away with the restrictions which the marital power places on the capacity of a wife to contract and to litigate.

## **13. ....**

*(Section 13 substituted by section 30 of Act 132 of 1993)*

*(Section 13 repealed by section 4 of Act 192 of 1993)*

## **CHAPTER III MARRIAGES IN COMMUNITY OF PROPERTY**

## **14. Equal powers of spouses married in community**

Subject to the provisions of this Chapter, a wife in a marriage in community of property has the same powers with regard to the disposal of the assets of the joint estate, the contracting of debts which lie against the joint estate, and the management of the joint estate as those which a husband in such a marriage had immediately before the commencement of this Act.

## **15. Powers of spouses**

- (1) Subject to the provisions of subsections (2), (3) and (7), a spouse in a marriage in community of property may perform any juristic act with regard to the joint estate without the consent of the other spouse.
- (2) Such a spouse shall not without the written consent of the other spouse –
  - (a) alienate, mortgage, burden with a servitude or confer any other real right in any immovable property forming part of the joint estate;

- (b) enter into any contract for the alienation, mortgaging, burdening with a servitude or conferring of any other real right in immovable property forming part of the joint estate;
- (c) alienate, cede or pledge any shares, stock, debentures, debenture bonds, insurance policies, mortgage bonds, fixed deposits or any similar assets, or any investment by or on behalf of the other spouse in a financial institution, forming part of the joint estate;
- (d) alienate or pledge any jewellery, coins, stamps, paintings or any other assets forming part of the joint estate and held mainly as investments;
- (e) withdraw money held in the name of the other spouse in any account in a banking institution, a building society Of the Post Office Savings Bank of the Republic of South Africa;
- (f) enter, as a consumer, into a credit agreement to which the provisions of the National Credit Act, 2005 apply, as 'consumer' and 'credit agreement' are respectively defined in that Act, but this paragraph does not require the written consent of a spouse before incurring each successive charge under a credit facility, as defined in that Act;  
*(Section 15(2)(f) substituted by section 172 of Act 34 of 2005)*
- (g) as a purchaser enter into a contract as defined in the Alienation of Land Act, 1981 (Act No. 68 of 1981), and to which the provisions of that Act apply;
- (h) bind himself as surety.

(3) A spouse shall not without the consent of the other spouse –

- (a) alienate, pledge or otherwise burden any furniture or other effects of the common household forming part of the joint estate;
- (b) receive any money due or accruing to that other spouse or the joint estate by way of –
  - (i) remuneration, earnings, bonus, allowance, royalty, pension or gratuity, by virtue of his profession, trade, business, or services rendered by him;
  - (ii) damages for loss of income contemplated in subparagraph (i);
  - (iii) inheritance, legacy, donation, bursary or prize left, bequeathed, made or awarded to the other spouse;
  - (iv) income derived from the separate property of the other spouse;

- (v) dividends or interest on or the proceeds of shares or investments in the name of the other spouse;
  - (vi) the proceeds of any insurance policy or annuity in favour of the other spouse;
  - (c) donate to another person any asset of the joint estate or alienate such an asset without value, excluding an asset of which the donation or alienation does not and probably will not unreasonably prejudice the interest of the other spouse in the joint estate, and which is not contrary to the provisions of subsection (2) or paragraph (a) of this subsection.
- (4) The consent required for the purposes of paragraphs (b) to (g) of subsection (2), and subsection (3) may, except where it is required for the registration of a deed in a deeds registry, also be given by way of ratification within a reasonable time after the act concerned.
- (5) The consent required for the performance of the acts contemplated in paragraphs (a), (b), (f), (g) and (h) of subsection (2) shall be given separately in respect of each act and shall be attested by two competent witnesses.
- (6) The provisions of paragraphs (b), (c), (f), (g) and (h) of subsection (2) do not apply where an act contemplated in those paragraphs is performed by a spouse in the ordinary course of his profession, trade or business.
- (7) Notwithstanding the provisions of subsection (2)(c), a spouse may without the consent of the other spouse –
- (a) sell listed securities on the stock exchange and cede or pledge listed securities in order to buy listed securities;
  - (b) alienate, cede or pledge –
    - (i) a deposit held in his name at a building society or banking institution;
    - (ii) building society shares registered in his name.
- (8) In determining whether a donation or alienation contemplated in subsection (3)(c) does not or probably will not unreasonably prejudice the interest of the other spouse in the joint estate, the court shall have regard to the value of the property donated or alienated, the reason for the donation or alienation, the financial and social standing of the spouses, their standard of living and any other factor which in the opinion of the court should be taken into account.
- (9) When a spouse enters into a transaction with a person contrary to the provisions of subsection (2) or (3) of this section, or an order under section 16(2), and –

- (a) that person does not know and cannot reasonably know that the transaction is being entered into contrary to those provisions or that order, it is deemed that the transaction concerned has been entered into with the consent required in terms of the said subsection (2) or (3), or while the power concerned of the spouse has not been suspended, as the case may be;
- (b) that spouse knows or ought reasonably to know that he will probably not obtain the consent required in terms of the said subsection (2) or (3), or that the power concerned has been suspended, as the case may be, and the joint estate suffers a loss as a result of that transaction, an adjustment shall be effected in favour of the other spouse upon the division of the joint estate.

#### **16. Want of consent, and suspension of powers of spouse**

- (1) When a spouse withholds the consent required in terms of subsection (2) or (3) of section 15, or section 17, or when that consent, can for any other reason not be obtained, a court may on the application of the other spouse give him leave to enter into the transaction without the required consent if it is satisfied, in the case where the consent is withheld, that such withholding is unreasonable or, in any other case, that there is good reason to dispense with the consent.
- (2) If a court is satisfied that it is essential for the protection of the interest of a spouse in the joint estate, it may on the application of that spouse suspend for a definite or an indefinite period any power which the other spouse may exercise under this Chapter.

#### **17. Litigation by or against spouses**

- (1) A spouse married in community of property shall not without the written consent of the other spouse institute legal or proceedings against another person or defend legal proceedings instituted by another person, except legal proceedings –
  - (a) in respect of his separate property;
  - (b) for the recovery of damages, other than damages for patrimonial loss, by reason of the commission of a delict against him;
  - (c) in respect of a matter relating to his profession, trade or business.
- (2) A party to legal proceedings instituted or defended by a spouse may not challenge the validity of the proceedings on the ground of want of the consent required in terms of subsection (1).
- (3) If costs are awarded against a spouse in legal proceedings instituted or defended by him without the consent required in terms of subsection (1), the court may, with due regard to the interest of the other

spouse in the joint estate and the reason for the want of consent, order that those costs be recovered from the separate property, if any, of the first-mentioned spouse and, in so far as those costs cannot be so recovered, that they be re covered from the joint estate, in which case the court may order that upon the division of the joint estate an adjustment shall be effected in favour of the other spouse.

(4)

- (a) An application for the surrender of a joint estate shall be made by both spouses.
- (b) An application for the sequestration of a joint estate shall be made against both spouses: Provided that no application for the sequestration of the estate of a debtor shall be dismissed on the ground that such debtor's estate is a joint estate if the applicant satisfies the court that despite reasonable steps taken by him he was unable to establish whether the debtor is married in community of property or the name and address of the spouse of the debtor.

*(Section 17(4) substituted by section 11 of Act 122 of 1993)*

- (5) Where a debt is recoverable from a joint estate, the spouse who incurred the debt or both spouses jointly may be sued therefor, and where a debt has been incurred for necessities for the joint household, the spouses may be sued jointly or severally therefor.

#### **CHAPTER IV GENERAL PROVISIONS**

#### **18. Certain damages excluded from community and recoverable from other spouse**

Notwithstanding the fact that a spouse is married in community of property-

- (a) any amount recovered by him or her by way of damages, other than damages for patrimonial loss, by reason of a delict committed against him or her, does not fall into the joint estate but becomes his or her separate property;
- (b) he or she may recover from the other spouse damages in respect of bodily injuries suffered by him or her and attributable either wholly or in part to the fault of that spouse and these damages do not fall into the joint estate but become the separate property of the injured spouse.

*(Section 18 substituted by section 21 of Act 66 of 2008)*

#### **19. Liability for delicts committed by spouses**

When a spouse is liable for the payment of damages, including damages for non-patrimonial loss, by reason of a delict committed by him or when a contribution is recoverable from a spouse under the Apportionment of Damages Act, 1956 (Act No. 34 of 1956), such damages or contribution and any costs awarded against him are recoverable from the separate property, if any, of that spouse, and only in so far as he has no separate property, from the joint estate: Provided that in so far as such

damages, contribution or costs have been recovered from the joint estate, an adjustment shall, upon the division of the joint estate, be effected in favour of the other spouse or his estate, as the case may be.

## **20. Power of court to order division of joint estate**

- (1) A court may on the application of a spouse, if it is satisfied that the interest of that spouse in the joint estate is being or will probably be seriously prejudiced by the conduct or proposed conduct of the other spouse, and that other persons will not be prejudiced thereby, order the immediate division of the joint estate in equal shares or on such other basis as the court may deem just.
- (2) A court making an order under subsection (1) may order that the community of property be replaced by another matrimonial property system, subject to such conditions as it may deem fit.

## **21. Change of matrimonial property system**

- (1) A husband and wife, whether married before or after the commencement of this Act, may jointly apply to a court for leave to change the matrimonial property system, including the marital power, which applies to their marriage, and the court may, if satisfied that –
  - (a) there are sound reasons for the proposed change;
  - (b) sufficient notice of the proposed change has been given to all the creditors of the spouses; and
  - (c) no other person will be prejudiced by the proposed change,

order that such matrimonial property system shall no longer apply to their marriage and authorize them to enter into a notarial contract by which their future matrimonial property system is regulated on such conditions as the court may think fit.

- (2)
  - (a) Notwithstanding anything to the contrary in any law or the common law contained, but subject to the provisions of paragraphs (b) and (c), the spouses to a marriage out of community of property –
    - (i) entered into before the commencement of this Act in terms of an antenuptial contract by which community of property and community of profit and loss are excluded; or
    - (ii) entered into before the commencement of the Marriage and Matrimonial Property Law Amendment Act, 1988, in terms of section 22(6) of the Black Administration Act, 1927 (Act No. 38 of 1927), as it was in force immediately before its re-peal by the said Marriage and Matrimonial Property Law Amendment Act, 1988,

may cause the provisions of Chapter I of this Act to apply in respect of their marriage by the execution and registration in a registry within two years after the commencement of this Act or, in the case of a marriage contemplated in subparagraph (ii) of this paragraph, within two years after the commencement of the said Marriage and Matrimonial Property Law Amendment Act, 1988, as the case may be, or such longer period, but not less than six months, determined by the Minister by notice in the *Gazette*, of a notarial contract to that effect.

*(Section 21(2)(a) substituted by section 1(a) of Act 91 of 1986)*

*(Section 21(2)(a) substituted by section 3 of Act 3 of 1988)*

- (b) The provisions of Chapter I apply in such a case from the date of the conclusion of the marriage of the spouses or from the date of the execution of the notarial contract concerned, as the spouses may declare in that contract.
- (c) For the purpose of proof of the net value of the respective estates of the spouses on the date on which the provisions of Chapter I so apply, they may declare that value either in the notarial contract concerned or in a statement as contemplated in section 6, and in the last-mentioned case the provisions of the said section 6 apply *mutatis mutandis* in respect of that statement.

*(Section 21(2)(c) substituted by section 1(b) of Act 91 of 1986)*
- (d) For the purposes of section 4 (1) the commencement of the marriage concerned is deemed to be the date contemplated in paragraph (b).
- (e) The inclusion of an asset in a statement contemplated in section 6 does not serve as proof of any right of any person with regard to that asset or for the purpose of any release contemplated in section 21(1) of the Insolvency Act, 1936 (Act No. 24 of 1936).

## **22. Donations between spouses permissible**

Subject to the provisions of the Insolvency Act, 1936 (Act No. 24 of 1936), no transaction effected before or after the commencement of this Act is void or voidable merely because it amounts to a donation between spouses.

## **23. Liability of spouses for household necessities**

- (1) Any right of recourse which a spouse may have against the other spouse in terms of the common law or any law which is in force at the commencement of this Act or which was in force before that commencement, in respect of contributions made for necessities for the joint household of the spouses, lapses, subject to the provisions of subsections (3) and (4), at that commencement.
- (2) A spouse married out of community of property before or after the commencement of this Act is liable to contribute to necessities for the joint household pro rata according to his financial means, and is

deemed to have been so liable for the period from the beginning of his marriage until that commencement.

- (3) A spouse married out of community of property before the commencement of this Act has a right of recourse against the other spouse in so far as he has contributed more in respect of necessaries for the joint household than that for which he was liable in terms of subsection (2).
- (4) In the absence of any agreement to the contrary between spouses, a spouse does not have a right of recourse against the other spouse to whom he was married out of community of property after the commencement of this Act with regard to any contribution which he made in respect of necessaries for the joint household.
- (5) Spouses married out of community of property are jointly and severally liable to third parties for all debts incurred by either of them in respect of necessaries for the joint household.
- (6) Subsection (1) shall not be construed as conferring on a spouse a right to reclaim anything that he has already paid at the commencement of this Act in satisfaction of a right of recourse, and subsection (3) shall not be construed as conferring on a spouse a right to exercise the right of recourse referred to in that subsection in respect of any period with regard to which he has already exercised a right of recourse on any other ground.

#### **24. Distribution of matrimonial property upon dissolution of marriage for want of consent of parents or guardian**

- (1) If a court dissolves a marriage to which a minor is a party on the ground of want of consent of the parents or guardian of that minor, or a commissioner of child welfare whose consent is by law required for the entering into of a marriage, it may make such order with regard to the division of the matrimonial property of the spouses as it may deem just.
- (2) If such a marriage is not dissolved, the patrimonial consequences of the marriage are the same as if the minor were of age when the marriage was entered into and any antenuptial contract in terms of which the accrual system is included and which has been executed with a view to such a marriage is deemed to have been validly executed.

#### **25. Application of Chapters II and III**

- (1) .....

*(Section 25(1) deleted by section 4(a) of Act 3 of 1988)*

- (2) Notwithstanding anything to the contrary in any law or the common law contained, the spouses to a marriage entered into before the commencement of this Act and in respect of which the matrimonial

property system was not governed by section 22 of the Black Administration Act, 1927 (Act No. 38 of 1927), may-

- (a) if they are married in community of property, cause the provisions of Chapters II and III of this Act to apply to their marriage; or
- (b) if they are married out of community of property and the wife is subject to the marital power of the husband, cause the provisions of Chapter II of this Act to apply to their marriage,

by the execution and registration in a registry within two years after the said commencement or such longer period, but not less than six months, determined by the Minister by notice in the *Gazette*, of a notarial contract to that effect, and in such a case those provisions apply from the date on which the contract concerned was so registered.

*(Section 25(2) substituted by section 2 of Act 91 of 1986)*

*(Section 25(2) substituted by section 4(b) of Act 3 of 1988)*

- (3) Notwithstanding anything to the contrary in any law or the common law contained, the spouses to a marriage entered into before the commencement of the Marriage and Matrimonial Property Law Amendment Act, 1988, and in respect of which the matrimonial property system was governed by section 22 of the Black Administration Act, 1927 (Act No. 38 of 1927), may-

- (a) if they are married in community of property, cause the provisions of Chapters II and III of this Act to apply to their marriage; or
- (b) if they are married out of community of property and the wife is subject to the marital power of the husband, cause the provisions of Chapter II of this Act to apply to their marriage,

by the execution and registration in a registry within two years after the said commencement or such longer period, but not less than six months, determined by the Minister by notice in the *Gazette*, of a notarial contract to that effect, and in such a case those provisions apply from the date on which the contract was so registered.

*(Section 25(3) added by section 4(c) of Act 3 of 1988)*

26. ....

*(Section 26 substituted by section 5 of Act 3 of 1988)*

*(Section 26 repealed by section 31 of Act 132 of 1993)*

27. ....

*(Section 27 repealed by section 2 of Act 81 of 1987)*

**28. Amendment of section 3 of Act 47 of 1937, as substituted by section 2 of Act 87 of 1965 and amended by section 1 of Act 41 of 1977, section 1 of Act 92 of 1978, section 1 of Act 44 of 1980 and section 3 of Act 27 of 1982**

Section 3 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), is hereby amended by the substitution for paragraph (k) of subsection (1) of the following paragraph:

“(k) register antenuptial contracts, including orders under section 20, and contracts contemplated in section 21, of the Matrimonial Property Act, 1984, and register such notarial deeds of donation (including a donation to be held in trust) and such other notarial deeds having reference to persons and property within the area served by the registry in question as are required or permitted by law to be registered”

**29. Substitution of section 17 of Act 47 of 1937, as amended by section 1 of Act 15 of 1953, section 8 of Act 43 of 1957, section 8 of Act 43 of 1962 and section 5 of Act 3 of 1972**

The following section is hereby substituted for section 17 of the Deeds Registries Act, 1937:

**“17. Registration of immovable property in name of married persons.**

(1) From the commencement of the Matrimonial Property Act, 1984, immovable property, real rights in immovable property and notarial deeds which would upon transfer, cession or registration thereof form part of a joint estate shall be registered in the name of the husband and the wife, excluding agricultural land as defined in the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), unless that transfer, cession or registration takes place only in the name of a partnership, and the husband or wife is involved therein only in the capacity of partner in that partnership.

(2) Every deed executed or attested by a registrar, or attested by a notary public and required to be registered in a deeds registry, and made by or on behalf of or in favour of any person, shall

(a) state the full name and marital status of the person concerned;

(b) where the marriage concerned is governed by the law in force in the Republic or any part thereof, state whether the marriage was contracted in or out of community of property;

(c) where the person concerned is married in community of property, state the full name of his spouse; and

(d) where the marriage concerned is governed by the law of any other country, state that the marriage is governed by the law of that country.

(3) Where a marriage in community of property has been dissolved by the death of one of the spouses before property which on transport or cession thereof would have formed part of the joint estate could be transferred or ceded, that property shall be transferred or ceded to the joint estate of the spouses, pending the administration thereof, and is, subject to the provisions of any disposition with regard to that property, deemed to be the joint property of the surviving spouse and of the estate of the deceased spouse.

(4) If immovable property forming part of a joint estate is registered in a deeds registry in the name of either the husband or the wife, the registrar shall on the written application of the husband or the wife, as the case may be, if he is satisfied as to the relevant facts, make a note on the title deed of that property, or if the title deed can for any reason not be produced to him, only on the registry duplicate thereof, and in the appropriate registers, to the effect that it is property in respect of which the provisions of section 15(2)(a) of the Matrimonial Property Act, 1984, apply.

(5) The registration of a right to a mineral in the name of a husband and a wife according to the provisions of subsection (1) shall not be construed as constituting the division of any right to any mineral or minerals in respect of any land between that husband and wife into undivided shares, or an increase in the number of holders of undivided shares in any right to any mineral or minerals in respect of any land as contemplated in section 2 of the Mineral Laws Supplementary Act, 1975 (Act No. 10 of 1975).

(6) A woman married out of community of property shall be assisted by her husband in executing any deed or other document required or permitted to be registered in any deeds registry or required or permitted to be produced in connection with any such deed or document, unless the marital power has been excluded or unless the assistance of the husband is in terms of this Act or on other grounds deemed by the registrar to be unnecessary.”.

**30. Amendment of section 25 of Act 47 of 1937, as amended by section 10 of Act 43 of 1962**

Section 25 of the Deeds Registries Act, 1937, is hereby amended by the substitution in subsection (3) for the expression “subsection (3) of section seventeen” of the expression “section 17(1)”.

**31. Amendment of section 45 of Act 47 of 1937, as amended by section 20 of Act 43 of 1957 and section 19 of Act 43 of 1962**

Section 45 of the Deeds Registries Act, 1937, is hereby amended by the substitution for subsection (1) of the following subsection: as

“(1) If immovable property or a lease under any law relating to land settlement or a bond is registered in a deeds registry in the name of the survivor of two spouses who were married in community of property, or in the name of the joint estate of such spouses, or in the name of both such spouses, and **[such survivor] the surviving spouse** has lawfully acquired the share of the deceased spouse in the property, lease or bond, the registrar shall on written application by the executor in the estate of the deceased spouse and by **[such survivor] the surviving spouse** save where **[such survivor] the surviving spouse** has signed as executor, accompanied by such other documents as may be prescribed, endorse on the title deeds of the property or on the deed of lease or on the bond that the **[survivor] surviving spouse** is entitled to deal with such property, lease or bond, and thereupon **[such survivor] he** shall be entitled to deal therewith as if he had taken formal transfer or cession into his own name of the share of the deceased spouse in the property, lease or bond.”.

### 32. Insertion of section 89 in Act 47 of 1937

The following section is hereby inserted in the Deeds Registries Act, after section 88:

#### **“89. Registration of postnuptial contracts**

(1) The provisions of sections 86 and 87 shall of *mutatis mutandis* apply in respect if -

(a) an order under section 20 of the Matrimonial Property Act, 1984, as if that order were a notarial deed;

(b) a contract in terms of section 21 or 25(2) of the Matrimonial Property Act, 1984.

(2) Where a contract in terms of section 21 or 25(2)(b) of the Matrimonial Property Act, 1984, replaces or amends an existing antenuptial contract, the contract to be registered shall be accompanied by the existing contract or a certified copy thereof.

(3) Upon the registration of a contract contemplated in section 21 or 25(2)(b) of the Matrimonial Property Act, 1984, the existing antenuptial contract, if any, shall be cancelled or endorsed appropriately, as the case may be, and for that purpose the registrar shall notify the registrar of the registry where the existing contract is registered and every registrar in whose registry a copy thereof is filed in terms of section 87(3).”.

### 33. Amendment of section 2 of Act 34 of 1956, as amended by section 1 of Act 58 of 1971

Section 2 of the Apportionment of Damages Act, 1956 (Act No. 34 of 1956), is hereby amended -

(a) by the substitution for subsection (1A) of the following subsection:

“(1A) **[Subject to the provisions of the first proviso to subsection (6)(a)]** A person shall for the purposes of this section be regarded as a joint wrongdoer if he would have been a joint wrongdoer but for the fact that he is married in community of property to the plaintiff.  
“; and

(b) by the deletion of the first proviso to subsection (6)(a).

#### **34. Insertion of section 24A in Act 25 of 1961**

The following section is hereby inserted in the Marriage Act, 1961 (Act No. 25 of 1961), after section 24:

##### **“24A. Consequences and dissolution of marriage for want of consent of parents or guardian**

(1) Notwithstanding anything to the contrary contained in any law or the common law a marriage between persons of whom one or both are minors shall not be void merely because the parents or guardian of the minor, or a commissioner of child welfare whose consent is by law required for the entering into of a marriage, did not consent to the marriage, but may be dissolved by a competent court on the ground of want of consent if application for the dissolution of the marriage is made -

(a) by a parent or guardian of the minor before he attains majority and within six weeks of the date on which the parent or guardian becomes aware of the existence of the marriage; or

(b) by the minor before he attains majority or within three months thereafter.

(2) A court shall not grant an application in terms of subsection (1) unless it is satisfied that the dissolution of the, marriage is in the interest of the minor or minors.”.

#### **35. Amendment of section 29 of Act 32 of 1944, as substituted by section 27 of Act 94 of 1974 and amended by section 1 of Act 56 of 1984**

Section 29 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), is hereby amended by the insertion after paragraph (e) of the following paragraph:

“(eA) actions in terms of section 16(1) of the Matrimonial Property Act, 1984, where the claim or the value of the property in dispute does not exceed R5 000;”.

#### **36. Amendment of section 7 of Act 70 of 1979**

Section 7 of the Divorce Act, 1979 (Act No. 70 of 1979), is hereby amended -

(a) by the substitution for subsection (2) of the following subsection:

“(2) In the absence of an order made in terms of subsection (1) with regard to the payment of maintenance by the one party to the other, the court may, having regard to the existing or prospective means of each of the parties, their respective earning capacities, financial needs and obligations, the age of each of the parties, the duration of the marriage, the standard of living of the parties prior to the divorce, their conduct in so far as it may be relevant to the break-down of the marriage, an order in terms of subsection (3) and any other factor which in the opinion of the court should be taken into account, make an order which the court finds just in respect of the payment of maintenance by the one party to the other for any period until the death or remarriage of the party in whose favour the order is given, whichever event may first occur.”; and

(b) by the addition of the following subsections:

“(3) A court granting a decree of divorce in respect of a marriage out of community of property entered into before the commencement of the Matrimonial Property Act, 1984, in terms of an antenuptial contract by which community of property, community of profit and loss and accrual sharing in any form are excluded, may, subject to the provisions of subsection (4), (5) and (6), on application by one of the parties to that marriage, in the absence of any agreement between them regarding the division of their assets, order that such assets, or such part of the assets, of the other party as the court may deem just be transferred to the first-mentioned party.

(4) An order under subsection (3) shall not be granted unless the court is satisfied that it is equitable and just by reason of the fact that the party in whose favour the order is granted, contributed directly or indirectly to the maintenance or increase of the estate of the other party during the subsistence of the marriage, either by the rendering of services, or the saving of expenses which would otherwise have been incurred or in any other manner.

(5) In the determination of the assets or part of the assets to be transferred as contemplated in subsection (3) the court shall, apart from any direct or indirect contribution made by the party concerned to the maintenance or increase of the estate of the other party as contemplated in subsection (4), also take into account -

(a) the existing means and obligations of the parties;

(b) any donation made by one party to the other during the subsistence of the marriage, or which is owing and enforceable in terms of the antenuptial contract concerned;

(c) any order which the court grants under section 9 of this Act or under any other law which affects the patrimonial position of the parties; and

(d) any other factor which should in the opinion of the court be taken into account.

(6) A court granting an order under subsection (3) may, on application by the party against whom the order is granted, order that satisfaction of the order be deferred on such conditions, including conditions relating to the furnishing of security, the payment of interest, the payment of instalments, and the delivery or transfer of specified assets, as the court may deem just.”.

### 37. Repeal of laws

The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

### 38. Short title and commencement

- (1) This Act shall be called the Matrimonial Property Act, 1984, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.
- (2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.

### Schedule

Number and year of law	Title or subject	Extent of repeal
The Perpetual Edict of 4 October 1540	The Perpetual Edict	Extent of repeal Section 17 in so far as it is in force in the Republic
The Political Ordinance of 1 April 1580	The Political Ordinance	Sections 3 and 13 in so far as they are in force in the Republic
Law No 13 of 1883 (Natal)	To amend the Law of Divorce	Sections 10 and 11
Act No 37 of 1953	Matrimonial Affairs Act, 1953	Section 3
Act No 13 of 1976	Matrimonial Affairs Amendment Act, 1976	The whole

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