

## MARRIAGE REGIMES

### A) HOW DOES MY MARRIAGE REGIME AFFECT THE ADMINISTRATION PROCESS?

Marriage regimes have an influence on how certain assets are dealt with in the deceased estate administration process:

#### 1) IN COMMUNITY OF PROPERTY (NO CONTRACT BETWEEN SPOUSES)

- It is seen as a system of universal community of property.
- Consequently, at the time of marriage, all assets and liabilities of the spouses merge into one joint estate of which the husband and wife each become owner of an undivided half-share.
- The Executor thus has to deal with the assets of the deceased, as well as that of the surviving spouse.
- All the assets of the joint estate will be reflected in the Liquidation & Distribution (L&D) Account.

#### 2) OUT OF COMMUNITY OF PROPERTY (THERE WILL BE AN ANTENUPTIAL CONTRACT (ANC) BETWEEN SPOUSES)

- The **ANC** can either be **WITH** or **WITHOUT** the accrual system.
  - **Without** the accrual system the Executor will only deal with the deceased's part of the estate.
  - **With** the accrual system the Executor will deal with the deceased's estate, as well as the growth in the combined estate after marriage.
    - On death, the accrual growth of each person is determined separately and the difference between the two accruals is divided in equal parts.
    - The spouse with the smaller accrual then obtains the right to claim 50% of the difference from the other spouse.
    - The accrual must be calculated and dealt with by the Executor.

### B) HOW DOES A PREVIOUS DIVORCE AND MAINTENANCE OBLIGATIONS AFFECT THE ESTATE?

- Any amount due to a child or ex-spouse emanating from a divorce order becomes a claim against the Estate and must be dealt with as such by the Executor.

**C) WHAT IS THE MAINTENANCE OF SURVIVING SPOUSE ACT?**

- In certain instances a surviving spouse may be able to claim maintenance from his/her spouse's estate.
- It can be quite a lengthy process and can take 12 – 18 months to finalise.
- It is therefore of utmost importance to make provision in your estate planning exercise to have sufficient cash resources available to cover the living expenses of your spouse and children.