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**OUT OF COMMUNITY OF PROPERTY MARRIAGES ENTERED INTO BEFORE 1988
UNDER THE BLACK ADMINISTRATION ACT NOW DECLARED TO BE MARRIAGES IN
COMMUNITY OF PROPERTY**

In the event of someone being married where the laws of South Africa apply, without an antenuptial contract, such person is automatically married in community of property. Only if an antenuptial contract is registered in the relevant Deed's Office would the marriage be one of out of community of property.

The above, however, does not apply to marriages between black people married prior to 1988. The Black Administration Act ("the Act") provides for these marriages to automatically be out of community of property.

The distinction between in and out of community of property, in short, is that when married out of community of property spouses each have a separate estate, when parties are married in community of property, they have one shared and undivided estate. In respect of marriages in community of property each party would have a claim to half of the estate and creditors may attach assets within the joint estate, despite only one of the spouses incurring the debt. The same is, not applicable to a marriage out of community of property, as each spouse is solely responsible for their own debts.

Recently the position as governed by the Act was considered in the High Court of KwaZulu Natal and found to be inconsistent with the Constitution. Deputy Judge President Isaac Madondo based the judgment on the recognition of the equal worth and dignity of all black couples of a civil marriage being long overdue.

The judgment continued to declare all existing civil marriages, considered to be marriages out of community of property under the Act, to now be in community of property.

Persons who prefer for their marriages to remain out of community of property are now to apply to the High Court to sanction same.

The ruling and the effect thereof are still to be confirmed by the Constitutional Court.



Going Beyond

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