

ANTENUPTIAL AGREEMENTS: MEDIATION AS A MEANS TO AMEND AN ANC

Introduction

Getting married is an exciting journey for any couple seeking to spend the rest of their lives together. However, not every marriage has a happy ending, and one needs to be prepared in the unfortunate event of a divorce, a spouse pre-deceasing the other or possible insolvency.

Ordinarily, should a couple wish for a distribution of assets that differs from the *de facto* in community of property position, they would have to conclude an antenuptial contract. However, it may occur that a few months or years down the line, the parties wish to revisit the provisions of the antenuptial agreement and make a few amendments.

Overview

To make these amendments, it may be beneficial for the spouses to undergo a process of mediation. Amendments to a registered antenuptial contract will require an application to be made to court. Considering same, it may be beneficial to utilise the mechanism of mediation to iron out the proposed amendments prior to entering into the necessary litigious process.

Mediation would entail that a mediator hear both spouses and allow them to express and reach an agreement as to what amendments should be made to the antenuptial agreement. In simple terms, having a mediator during the amendment process allows for 'fair game'.

The most important part of mediation is choosing a mediator. It is important to choose someone who has had experience in drafting an antenuptial agreement and has knowledge about divorce, wills and estates and insolvency law.

The benefits of mediation during the amendment of an antenuptial agreement is that it facilitates easier litigation and assists the spouses in saving costs. The aforesaid application is required to be made to the High Court and may be costly. The application must be made to the High Court in terms of section 21 of the Matrimonial Property Act of 1984.

Mediation may assist in reaching a speedy consensus between the parties in respect of the required amendments and may curtail a lengthy litigious process.

Conclusion

Mediation is thus a helpful tool in avoiding possible conflict and will aid a couple in protecting their individual assets whilst ensuring that this is done in a peaceful way.

Contact an attorney at Schoemanlaw for your family law needs!