

Short notes on:

ANTENUPTIAL CONTRACTS: CLAUSES TO AVOID

Introduction

Most couples do a bit of homework before making the decision to conclude an antenuptial contract. In fact, I, as a rule of thumb, ask whether they have during a consultation.

The above exercise has indicated that couples often find themselves lost in potential clauses and protective mechanisms which may be included in an antenuptial contract but very rarely look at clauses to avoid and which may affect validity or registration.

This article aims to briefly highlight some of the potentially problematic clauses which, generally, should not be included in antenuptial contracts.

Overview

Couples have a certain degree of freedom when concluding antenuptial contracts. In saying that, however, clauses which are against the *bone mores* or rather the moral convictions of society should be avoided. In addition, clauses that interfere with the ordinary consequences of marriage should be avoided.

The inclusion of these clauses may render the antenuptial contract void and the antenuptial contract will not be registered by the deeds office.

Be that as it may, this may be rectified by removing the offending clauses and re-executing the antenuptial contract. However, should the antenuptial contract have been signed close to or on the marriage date, the resulting consequence may be that the parties are married in community of property.

Considering same it would be best to avoid these clauses. Examples of clauses that should be avoided are as follows amongst others:

- Terms which indicate that marital disputes should be resolved by arbitration,
- Terms permitting adultery,
- Terms where a spouse undertakes to convert to a religion,
- Terms which dictate that the spouses will not be living together after marriage,
- Terms which aim to preserve the male spouse's marital power,
- Terms which indicate that the wife agrees to permanently work as a housewife after marriage,
- Terms which aim to exclude a claim for forfeiture or claim for accrual should the marriage dissolve by way of divorce, and
- Terms which indicate that one spouse will not have the power to bind the other spouse to household necessities after marriage.

Conclusion

It is always best to consult with an attorney when concluding an antenuptial contract, especially when you may want to include clauses that are not necessarily standard for antenuptial contracts.

This will go a long way in avoiding unnecessary delays and unwanted consequences. It is important to point out that if an antenuptial contract is denied registration, and the couple has been married before executing a new one, they will be married in community of property.

In order to have this rectified the couple will have to make an application to the High Court to have their matrimonial property regime changed after concluding a post-nuptial contract. This can be a costly implication indeed!

Contact an attorney at SchoemanLaw Inc for your legal needs!