

Can you change your matrimonial property system?

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“My husband and I were married in community of property many years ago. We now however feel that it would be better for the management of our family and separate business interests if we were rather married out of community of property. Can we change our marriage system to out of community of property?”

Things change. What once seemed appropriate, a few years later may not. Fortunately, our law understands this and allows married couples to change their matrimonial property system at a later stage. But to dissuade flippant changes and to protect creditors, our law demands that a court approve such a change.

The following provides a brief overview of the process to change your matrimonial property system. It should be noted that this process may vary slightly for the different provincial High Courts.

- A notary must draft what is now termed a notarial post-nuptial contract for you containing the change in matrimonial property system you wish to apply to your marriage. This contract will for all intents and purposes have to meet similar requirements as would be necessary for a notarial ante-nuptial contract
- Your attorney will also have to assist you in giving notice to the Registrar of Deeds and your creditors of your proposed change of matrimonial property system. The notice of the proposed change to the Registrar of Deeds must be advertised in the Government Gazette and in two local newspapers in the area where the parties reside at least two weeks prior to the date of the application's hearing. The notice to the creditors must be given by certified post at least two weeks before the date of the application.
- Your attorney will then have to assist you in lodging an application with the High Court to change your matrimonial property system. In the application the parties must make full disclosure of their financial position and it will have to be shown that -
 - o There are sound reasons for the change;
 - o That sufficient notice was given to your creditors.
 - o That no other person would be prejudiced by the proposed change.
- Should the court approve the change of property system, the court will authorise a notary to sign and execute the notarial post-nuptial contract and register such with the relevant Deeds Office. The result of such registration will be that the matrimonial property system has been changed to that approved by the court and provided for in the notarial post-nuptial contract.

The process to amend your matrimonial property system can take a few months to be completed and can also be costly as it involves an application to court. But it can be done. If you wish to proceed with the change of your matrimonial property system I would advise that you consult an attorney as soon as possible to get the process started.

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