

## Marriages Out of Community of Property

Both spouses retain their own assets and liabilities during the marriage.  
Each party has their own separate estate.

### Excluding the Accrual System

The assets and liabilities of each spouse remains their own before, during, and after the marriage.

Therefore, in marriages excluding the accrual system there is no sharing of assets and liabilities whatsoever

### Including the Accrual System

The assets and liabilities of each spouse remains their own before, during and after the marriage.

**However**, the spouse whose estate has grown the least during the marriage will have a claim against the spouse whose estate grew the most during the marriage.

This has the effect that the parties share equally in the financial growth during the marriage.

## Implications

- This is a non-default position in South African Law. To enter into a marriage out of community of property, an Antenuptial Contract must be signed **before the marriage**.
- At the end of the marriage the spouses retain their assets and liabilities, unless they are married in terms of the accrual system, in which case there will be sharing of the financial growth shown during the marriage.
- Neither party has any claim to the assets of the other, nor can either party be held liable for the debt of the other.
- Both spouses have full powers to enter into transactions involving the assets and liabilities in their respective estate.

## Marriages In Community of Property

The assets and liabilities of both spouses are grouped together in one joint estate.  
Both parties have equal powers and responsibilities in respect of the joint estate.

## Implications

- This is the default position in South African Law. For this reason, no Antenuptial Contract is needed to marry in community of property.
- At the end of the marriage the spouses share equally in the assets and liabilities forming part of the joint estate.
- The parties share equally in the assets and are **equally responsible** for repayment of the debt attaching to the joint estate.
- The assets and liabilities of the parties become part of the joint estate when they get married
- There are some transactions which may not be entered into without the consent of both spouses. In some cases the consent required is verbal, other times it must be in writing.