

# MATRIMONIAL PROPERTY ACT NO. 88 OF 1984

[ASSENTED TO 3 JULY, 1984]

[DATE OF COMMENCEMENT: 1 NOVEMBER, 1984]

*(Afrikaans text signed by the State President)*

This Act has been updated to *Government Gazette* 31908 dated 17 February, 2009.

## as amended by

Matrimonial Property Amendment Act, No. 91 of 1986

Intestate Succession Act, No. 81 of 1987

[with effect from 18 March, 1988—see title SUCCESSION]

Marriage and Matrimonial Property Law Amendment Act, No. 3 of 1988

Insolvency Amendment Act, No. 122 of 1993

[with effect from 1 September, 1993—see title INSOLVENCY]

General Law Fourth Amendment Act, No. 132 of 1993

[with effect from 1 December, 1993—see title GENERAL LAW AMENDMENT ACTS]

Guardianship Act, No. 192 of 1993

[with effect from 1 March, 1994—see title CHILDREN]

Justice Laws Rationalisation Act, No. 18 of 1996

[with effect from 1 April, 1997—see title COURTS]

National Credit Act, No. 34 of 2005

[with effect from 1 June, 2006, unless otherwise indicated—see title DEBTOR AND CREDITOR]

Judicial Matters Amendment Act, No. 66 of 2008

[with effect from 17 February, 2009—see title COURTS]

## ACT

**To amend the matrimonial property law and to provide for matters connected therewith.**

### ARRANGEMENT OF SECTIONS

1. Definitions

### CHAPTER I

#### ACCRUAL SYSTEM

2. Marriages subject to accrual system
3. Accrual system
4. Accrual of estate

5. Inheritances, legacies and donations excluded from accrual
6. Proof of commencement value of estate
7. Obligation to furnish particulars of value of estate
8. Power of court to order division of accrual
9. Forfeiture of right to accrual sharing
10. Deferment of satisfaction of accrual claim

CHAPTER II  
ABOLITION OF MARITAL POWER

11. Abolition of marital power
12. Effect of abolition of marital power
13. . . . .

CHAPTER III  
MARRIAGES IN COMMUNITY OF PROPERTY

14. Equal powers of spouses married in community
15. Powers of spouses
16. Want of consent, and suspension of powers of spouse
17. Litigation by or against spouses

CHAPTER IV  
GENERAL PROVISIONS

18. Certain damages excluded from community and recoverable from other spouse
  19. Liability for delicts committed by spouses
  20. Power of court to order division of joint estate
  21. Change of matrimonial property system
  22. Donations between spouses permissible
  23. Liability of spouses for household necessities
  24. Distribution of matrimonial property upon dissolution of marriage for want of consent of parents or guardian
  25. Application of Chapters II and III
  26. . . . .
  27. . . . .
  - 28.
  - 29.
  - 30.
  - 31.
  - 32.
  - 33.
  - 34.
  - 35.
  - 36.
  37. Repeal of laws
  38. Short title and commencement
- Schedule.

**1. Definitions.**—In this Act, unless the context indicates otherwise—

“**banking institution**” means a banking institution as defined in section 1 of the Banks Act, 1965 (Act No. 23 of 1965);

“**building society**” means a building society as defined in section 1 of the Building Societies Act, 1965 (Act No. 24 of 1965);

“**court**” means a provincial or local division of the Supreme Court of South Africa or a divorce court instituted under section 10 of the Black Administration Act, 1927, Amendment Act, 1929 (Act No. 9 of 1929), and includes, for the purposes of section 16, a judge in chambers, and, for the purposes of section 16 (1), a magistrate’s court which has jurisdiction in the matter concerned;

“**financial institution**” means a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984);

“**joint estate**” means the joint estate of a husband and a wife married in community of property;

“**listed securities**” means securities as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);

[Definition of “listed securities” amended by s. 4 of Act No. 18 of 1996.]

“**separate property**” means property which does not form part of a joint estate.

## CHAPTER I ACCRUAL SYSTEM

**2. Marriages subject to accrual system.**—Every marriage out of community of property in terms of an antenuptial contract by which community of property and community of profit and loss are excluded, which is entered into after the commencement of this Act, is subject to the accrual system specified in this Chapter, except in so far as that system is expressly excluded by the antenuptial contract.

**3. Accrual system.**—(1) At the dissolution of a marriage subject to the accrual system, by divorce or by the death of one or both of the spouses, the spouse whose estate shows no accrual or a smaller accrual than the estate of the other spouse, or his estate if he is deceased, acquires a claim against the other spouse or his estate for an amount equal to half of the difference between the accrual of the respective estates of the spouses.

(2) Subject to the provisions of section 8 (1), a claim in terms of subsection (1) arises at the dissolution of the marriage and the right of a spouse to share in terms of this Act in the accrual of the estate of the other spouse is during the subsistence of the marriage not transferable or liable to attachment, and does not form part of the insolvent estate of a spouse.

**4. Accrual of estate.**—(1) (a) The accrual of the estate of a spouse is the amount by which the net value of his estate at the dissolution of his marriage exceeds the net value of his estate at the commencement of that marriage.

(b) In the determination of the accrual of the estate of a spouse—

- (i) any amount which accrued to that estate by way of damages, other than damages for patrimonial loss, is left out of account;
- (ii) an asset which has been excluded from the accrual system in terms of the antenuptial contract of the spouses, as well as any other asset which he acquired by virtue of his possession or former possession of the first-mentioned asset, is not taken into account as part of that estate at the commencement or the dissolution of his marriage;
- (iii) the net value of that estate at the commencement of his marriage is calculated with due allowance for any difference which may exist in the value of money at the commencement and dissolution of his marriage, and for that purpose the weighted average of the consumer price index as

published from time to time in the *Gazette* serves as *prima facie* proof of any change in the value of money.

(2) The accrual of the estate of a deceased spouse is determined before effect is given to any testamentary disposition, donation *mortis causa* or succession out of that estate in terms of the law of intestate succession.

**5. Inheritances, legacies and donations excluded from accrual.**—(1) An inheritance, a legacy or a donation which accrues to a spouse during the subsistence of his marriage, as well as any other asset which he acquired by virtue of his possession or former possession of such inheritance, legacy or donation, does not form part of the accrual of his estate, except in so far as the spouses may agree otherwise in their antenuptial contract or in so far as the testator or donor may stipulate otherwise.

(2) In the determination of the accrual of the estate of a spouse a donation between spouses, other than a donation *mortis causa*, is not taken into account either as part of the estate of the donor or as part of the estate of the donee.

**6. Proof of commencement value of estate.**—(1) Where a party to an intended marriage does not for the purpose of proof of the net value of his estate at the commencement of his marriage declare that value in the antenuptial contract concerned, he may for such purpose declare that value before the marriage is entered into or within six months thereafter in a statement, which shall be signed by the other party, and cause the statement to be attested by a notary and filed with the copy of the antenuptial contract of the parties in the protocol of the notary before whom the antenuptial contract was executed.

(2) A notary attesting such a statement shall furnish the parties with a certified copy thereof on which he shall certify that the original is kept in his protocol together with the copy of the antenuptial contract of the parties or, if he is not the notary before whom the antenuptial contract was executed, he shall send the original statement by registered post to the notary in whose protocol the antenuptial contract is kept, or to the custodian of his protocol, as the case may be, and the last-mentioned notary or that custodian shall keep the original statement together with the copy of the antenuptial contract of the parties in his protocol.

(3) An antenuptial contract contemplated in subsection (1) or a certified copy thereof, or a statement signed and attested in terms of subsection (1) or a certified copy thereof contemplated in subsection (2), serves as *prima facie* proof of the net value of the estate of the spouse concerned at the commencement of his marriage.

(4) The net value of the estate of a spouse at the commencement of his marriage is deemed to be nil if—

- (a) the liabilities of that spouse exceed his assets at such commencement;
- (b) that value was not declared in his antenuptial contract or in a statement in terms of subsection (1) and the contrary is not proved.

**7. Obligation to furnish particulars of value of estate.**—When it is necessary to determine the accrual of the estate of a spouse or a deceased spouse, that spouse or the executor of the estate of the deceased spouse, as the case may be, shall within a reasonable time at the request of the other spouse or the executor of the estate of the other spouse, as the case may be, furnish full particulars of the value of that estate.

**8. Power of court to order division of accrual.**—(1) A court may on the application of a spouse whose marriage is subject to the accrual system and who satisfies the court that his right to share in the accrual of the estate of the other spouse at the dissolution of the marriage is being or will probably be seriously prejudiced by the

conduct or proposed conduct of the other spouse, and that other persons will not be prejudiced thereby, order the immediate division of the accrual concerned in accordance with the provisions of this Chapter or on such other basis as the court may deem just.

(2) A court making an order under subsection (1) may order that the accrual system applicable to the marriage be replaced by a matrimonial property system in terms of which accrual sharing as well as community of property and community of profit and loss are excluded.

(3) When an order is made under subsection (2), the registrar shall send a copy thereof to the registrar of deeds concerned, who shall cause an appropriate reference to the new matrimonial property system to be made on the registry duplicate of the antenuptial contract concerned and on every copy thereof tendered to him for endorsement.

(4) A registrar of deeds who receives notice of a new matrimonial property system in terms of subsection (3), shall notify all other registrars of deeds accordingly and furnish each of them with a copy of the court order, and every registrar of deeds so notified shall cause an appropriate reference to the new matrimonial property system to be endorsed on the copy, if any, of the antenuptial contract concerned filed in his registry and on every copy thereof tendered to him for endorsement.

**9. Forfeiture of right to accrual sharing.**—The right to share in the accrual of the estate of a spouse in terms of this Chapter is a patrimonial benefit which may on divorce be declared forfeit, either wholly or in part.

**10. Deferment of satisfaction of accrual claim.**—A court may on the application of a person against whom an accrual claim lies, order that satisfaction of the claim be deferred on such conditions, including conditions relating to the furnishing of security, the payment of interest, the payment of instalments, and the delivery or transfer of specified assets, as the court may deem just.

## CHAPTER II ABOLITION OF MARITAL POWER

**11. Abolition of marital power.**—(1) The common law rule in terms of which a husband obtains the marital power over the person and property of his wife is hereby repealed.

(2) Any marital power which a husband has over the person and property of his wife immediately prior to the date of coming into operation of this subsection, is hereby abolished.

(3) The provisions of Chapter III shall apply to every marriage in community of property irrespective of the date on which such marriage was entered into.

(4) The abolition of the marital power by subsection (2) shall not affect the legal consequences of any act done or omission or fact existing before such abolition.

[S. 11 substituted by s. 29 of Act No. 132 of 1993.]

**12. Effect of abolition of marital power.**—Subject to the provisions of this Act, the effect of the abolition of the marital power is to do away with the restrictions which the marital power places on the capacity of a wife to contract and to litigate.

**13. . . . .**

[S. 13 substituted by s. 30 of Act No. 132 of 1993 and repealed by s. 4 of Act No. 192 of 1993.]

CHAPTER III  
MARRIAGES IN COMMUNITY OF PROPERTY

**14. Equal powers of spouses married in community.**—Subject to the provisions of this Chapter, a wife in a marriage in community of property has the same powers with regard to the disposal of the assets of the joint estate, the contracting of debts which lie against the joint estate, and the management of the joint estate as those which a husband in such a marriage had immediately before the commencement of this Act.

**15. Powers of spouses.**—(1) Subject to the provisions of subsections (2), (3) and (7), a spouse in a marriage in community of property may perform any juristic act with regard to the joint estate without the consent of the other spouse.

(2) Such a spouse shall not without the written consent of the other spouse—

- (a) alienate, mortgage, burden with a servitude or confer any other real right in any immovable property forming part of the joint estate;
- (b) enter into any contract for the alienation, mortgaging, burdening with a servitude or conferring of any other real right in immovable property forming part of the joint estate;
- (c) alienate, cede or pledge any shares, stock, debentures, debenture bonds, insurance policies, mortgage bonds, fixed deposits or any similar assets, or any investment by or on behalf of the other spouse in a financial institution, forming part of the joint estate;
- (d) alienate or pledge any jewellery, coins, stamps, paintings or any other assets forming part of the joint estate and held mainly as investments;
- (e) withdraw money held in the name of the other spouse in any account in a banking institution, a building society or the Post Office Savings Bank of the Republic of South Africa;
- (f) enter, as a consumer, into a credit agreement to which the provisions of the National Credit Act, 2005 apply, as “consumer” and “credit agreement” are respectively defined in that Act, but this paragraph does not require the written consent of a spouse before incurring each successive charge under a credit facility, as defined in that Act;

[Para. (f) substituted by s. 172 (2) of Act No. 34 of 2005.]

- (g) as a purchaser enter into a contract as defined in the Alienation of Land Act, 1981 (Act No. 68 of 1981), and to which the provisions of that Act apply;
- (h) bind himself as surety.

(3) A spouse shall not without the consent of the other spouse—

- (a) alienate, pledge or otherwise burden any furniture or other effects of the common household forming part of the joint estate;
- (b) receive any money due or accruing to that other spouse or the joint estate by way of—
  - (i) remuneration, earnings, bonus, allowance, royalty, pension or gratuity, by virtue of his profession, trade, business, or services rendered by him;
  - (ii) damages for loss of income contemplated in subparagraph (i);
  - (iii) inheritance, legacy, donation, bursary or prize left, bequeathed, made or awarded to the other spouse;

- (iv) income derived from the separate property of the other spouse;
  - (v) dividends or interest on or the proceeds of shares or investments in the name of the other spouse;
  - (vi) the proceeds of any insurance policy or annuity in favour of the other spouse;
- (c) donate to another person any asset of the joint estate or alienate such an asset without value, excluding an asset of which the donation or alienation does not and probably will not unreasonably prejudice the interest of the other spouse in the joint estate, and which is not contrary to the provisions of subsection (2) or paragraph (a) of this subsection.

(4) The consent required for the purposes of paragraphs (b) to (g) of subsection (2), and subsection (3) may, except where it is required for the registration of a deed in a deeds registry, also be given by way of ratification within a reasonable time after the act concerned.

(5) The consent required for the performance of the acts contemplated in paragraphs (a), (b), (f), (g) and (h) of subsection (2) shall be given separately in respect of each act and shall be attested by two competent witnesses.

(6) The provisions of paragraphs (b), (c), (f), (g) and (h) of subsection (2) do not apply where an act contemplated in those paragraphs is performed by a spouse in the ordinary course of his profession, trade or business.

(7) Notwithstanding the provisions of subsection (2) (c), a spouse may without the consent of the other spouse—

- (a) sell listed securities on the stock exchange and cede or pledge listed securities in order to buy listed securities;
- (b) alienate, cede or pledge—
  - (i) a deposit held in his name at a building society or banking institution;
  - (ii) building society shares registered in his name.

(8) In determining whether a donation or alienation contemplated in subsection (3) (c) does not or probably will not unreasonably prejudice the interest of the other spouse in the joint estate, the court shall have regard to the value of the property donated or alienated, the reason for the donation or alienation, the financial and social standing of the spouses, their standard of living and any other factor which in the opinion of the court should be taken into account.

(9) When a spouse enters into a transaction with a person contrary to the provisions of subsection (2) or (3) of this section, or an order under section 16 (2), and—

- (a) that person does not know and cannot reasonably know that the transaction is being entered into contrary to those provisions or that order, it is deemed that the transaction concerned has been entered into with the consent required in terms of the said subsection (2) or (3), or while the power concerned of the spouse has not been suspended, as the case may be;
- (b) that spouse knows or ought reasonably to know that he will probably not obtain the consent required in terms of the said subsection (2) or (3), or that the power concerned has been suspended, as the case may be, and the joint estate suffers a loss as a result of that transaction, an adjustment shall be effected in favour of the other spouse upon the division of the joint estate.

**16. Want of consent, and suspension of powers of spouse.**—(1) When a spouse withholds the consent required in terms of subsection (2) or (3) of section 15, or section 17, or when that consent can for any other reason not be obtained, a court may on the application of the other spouse give him leave to enter into the transaction without the required consent if it is satisfied, in the case where the consent is withheld, that such withholding is unreasonable or, in any other case, that there is good reason to dispense with the consent.

(2) If a court is satisfied that it is essential for the protection of the interest of a spouse in the joint estate, it may on the application of that spouse suspend for a definite or an indefinite period any power which the other spouse may exercise under this Chapter.

**17. Litigation by or against spouses.**—(1) A spouse married in community of property shall not without the written consent of the other spouse institute legal proceedings against another person or defend legal proceedings instituted by another person, except legal proceedings—

- (a) in respect of his separate property;
- (b) for the recovery of damages, other than damages for patrimonial loss, by reason of the commission of a delict against him;
- (c) in respect of a matter relating to his profession, trade or business.

(2) A party to legal proceedings instituted or defended by a spouse may not challenge the validity of the proceedings on the ground of want of the consent required in terms of subsection (1).

(3) If costs are awarded against a spouse in legal proceedings instituted or defended by him without the consent required in terms of subsection (1), the court may, with due regard to the interest of the other spouse in the joint estate and the reason for the want of consent, order that those costs be recovered from the separate property, if any, of the first-mentioned spouse and, in so far as those costs cannot be so recovered, that they be recovered from the joint estate, in which case the court may order that upon the division of the joint estate an adjustment shall be effected in favour of the other spouse.

(4) (a) An application for the surrender of a joint estate shall be made by both spouses.

(b) An application for the sequestration of a joint estate shall be made against both spouses: Provided that no application for the sequestration of the estate of a debtor shall be dismissed on the ground that such debtor's estate is a joint estate if the applicant satisfies the court that despite reasonable steps taken by him he was unable to establish whether the debtor is married in community of property or the name and address of the spouse of the debtor.

[Sub-s. (4) substituted by s. 11 of Act No. 122 of 1993.]

(5) Where a debt is recoverable from a joint estate, the spouse who incurred the debt or both spouses jointly may be sued therefor, and where a debt has been incurred for necessaries for the joint household, the spouses may be sued jointly or severally therefor.

#### CHAPTER IV GENERAL PROVISIONS

**18. Certain damages excluded from community and recoverable from other spouse.**—Notwithstanding the fact that a spouse is married in community of property—

- (a) any amount recovered by him or her by way of damages, other than damages for patrimonial loss, by reason of a delict committed against him or her, does not fall into the joint estate but becomes his or her separate property;
- (b) he or she may recover from the other spouse damage in respect of bodily injuries suffered by him or her and attributable either wholly or in part to the fault of that spouse and these damages do not fall into the joint estate but become the separate property of the injured spouse.

[S. 18 substituted by s. 21 of Act No. 66 of 2008.]

**19. Liability for delicts committed by spouses.**—When a spouse is liable for the payment of damages, including damages for non-patrimonial loss, by reason of a delict committed by him or when a contribution is recoverable from a spouse under the Apportionment of Damages Act, 1956 (Act No. 34 of 1956), such damages or contribution and any costs awarded against him are recoverable from the separate property, if any, of that spouse, and only in so far as he has no separate property, from the joint estate: Provided that in so far as such damages, contribution or costs have been recovered from the joint estate, an adjustment shall, upon the division of the joint estate, be effected in favour of the other spouse or his estate, as the case may be.

**20. Power of court to order division of joint estate.**—(1) A court may on the application of a spouse, if it is satisfied that the interest of that spouse in the joint estate is being or will probably be seriously prejudiced by the conduct or proposed conduct of the other spouse, and that other persons will not be prejudiced thereby, order the immediate division of the joint estate in equal shares or on such other basis as the court may deem just.

(2) A court making an order under subsection (1) may order that the community of property be replaced by another matrimonial property system, subject to such conditions as it may deem fit.

**21. Change of matrimonial property system.**—(1) A husband and wife, whether married before or after the commencement of this Act, may jointly apply to a court for leave to change the matrimonial property system, including the marital power, which applies to their marriage, and the court may, if satisfied that—

- (a) there are sound reasons for the proposed change;
- (b) sufficient notice of the proposed change has been given to all the creditors of the spouses; and
- (c) no other person will be prejudiced by the proposed change,

order that such matrimonial property system shall no longer apply to their marriage and authorize them to enter into a notarial contract by which their future matrimonial property system is regulated on such conditions as the court may think fit.

(2) (a) Notwithstanding anything to the contrary in any law or the common law contained, but subject to the provisions of paragraphs (b) and (c), the spouses to a marriage out of community of property—

- (i) entered into before the commencement of this Act in terms of an antenuptial contract by which community of property and community of profit and loss are excluded; or
- (ii) entered into before the commencement of the Marriage and Matrimonial Property Law Amendment Act, 1988, in terms of section 22 (6) of the Black Administration Act, 1927 (Act No. 38 of 1927), as it was in force

immediately before its repeal by the said Marriage and Matrimonial Property Law Amendment Act, 1988,

may cause the provisions of Chapter I of this Act to apply in respect of their marriage by the execution and registration in a registry within two years after the commencement of this Act or, in the case of a marriage contemplated in subparagraph (ii) of this paragraph, within two years after the commencement of the said Marriage and Matrimonial Property Law Amendment Act, 1988, as the case may be, or such longer period, but not less than six months, determined by the Minister by notice in the *Gazette*, of a notarial contract to that effect.

[Para. (a) substituted by s. 1 (a) of Act No. 91 of 1986 and by s. 3 of Act No. 3 of 1988.]

(b) The provisions of Chapter I apply in such a case from the date of the conclusion of the marriage of the spouses or from the date of the execution of the notarial contract concerned, as the spouses may declare in that contract.

(c) For the purpose of proof of the net value of the respective estates of the spouses on the date on which the provisions of Chapter I so apply, they may declare that value either in the notarial contract concerned or in a statement as contemplated in section 6, and in the last-mentioned case the provisions of the said section 6 apply *mutatis mutandis* in respect of that statement.

[Para. (c) substituted by s. 1 (b) of Act No. 91 of 1986.]

(d) For the purposes of section 4 (1) the commencement of the marriage concerned is deemed to be the date contemplated in paragraph (b).

(e) The inclusion of an asset in a statement contemplated in section 6 does not serve as proof of any right of any person with regard to that asset or for the purpose of any release contemplated in section 21 (1) of the Insolvency Act, 1936 (Act No. 24 of 1936).

**22. Donations between spouses permissible.**—Subject to the provisions of the Insolvency Act, 1936 (Act No. 24 of 1936), no transaction effected before or after the commencement of this Act is void or voidable merely because it amounts to a donation between spouses.

**23. Liability of spouses for household necessities.**—(1) Any right of recourse which a spouse may have against the other spouse in terms of the common law or any law which is in force at the commencement of this Act or which was in force before that commencement, in respect of contributions made for necessities for the joint household of the spouses, lapses, subject to the provisions of subsections (3) and (4), at that commencement.

(2) A spouse married out of community of property before or after the commencement of this Act is liable to contribute to necessities for the joint household *pro rata* according to his financial means, and is deemed to have been so liable for the period from the beginning of his marriage until that commencement.

(3) A spouse married out of community of property before the commencement of this Act has a right of recourse against the other spouse in so far as he has contributed more in respect of necessities for the joint household than that for which he was liable in terms of subsection (2).

(4) In the absence of any agreement to the contrary between spouses, a spouse does not have a right of recourse against the other spouse to whom he was married out of community of property after the commencement of this Act with regard to any contribution which he made in respect of necessities for the joint household.

(5) Spouses married out of community of property are jointly and severally liable to third parties for all debts incurred by either of them in respect of necessities for the joint household.

(6) Subsection (1) shall not be construed as conferring on a spouse a right to reclaim anything that he has already paid at the commencement of this Act in satisfaction of a right of recourse, and subsection (3) shall not be construed as conferring on a spouse a right to exercise the right of recourse referred to in that subsection in respect of any period with regard to which he has already exercised a right of recourse on any other ground.

**24. Distribution of matrimonial property upon dissolution of marriage for want of consent of parents or guardian.**—(1) If a court dissolves a marriage to which a minor is a party on the ground of want of consent of the parents or guardian of that minor, or a commissioner of child welfare whose consent is by law required for the entering into of a marriage, it may make such order with regard to the division of the matrimonial property of the spouses as it may deem just.

(2) If such a marriage is not dissolved, the patrimonial consequences of the marriage are the same as if the minor were of age when the marriage was entered into and any antenuptial contract in terms of which the accrual system is included and which has been executed with a view to such a marriage is deemed to have been validly executed.

**25. Application of Chapters II and III.**—(1) . . . . .

[Sub-s. (1) deleted by s. 4 (a) of Act No. 3 of 1988.]

(2) Notwithstanding anything to the contrary in any law or the common law contained, the spouses to a marriage entered into before the commencement of this Act and in respect of which the matrimonial property system was not governed by section 22 of the Black Administration Act, 1927 (Act No. 38 of 1927), may—

- (a) if they are married in community of property, cause the provisions of Chapters II and III of this Act to apply to their marriage; or
- (b) if they are married out of community of property and the wife is subject to the marital power of the husband, cause the provisions of Chapter II of this Act to apply to their marriage,

by the execution and registration in a registry within two years after the said commencement or such longer period, but not less than six months, determined by the Minister by notice in the *Gazette*, of a notarial contract to that effect, and in such a case those provisions apply from the date on which the contract concerned was so registered.

[Sub-s. (2) substituted by s. 2 of Act No. 91 of 1986 and by s. 4 (b) of Act No. 3 of 1988.]

(3) Notwithstanding anything to the contrary in any law or the common law contained, the spouses to a marriage entered into before the commencement of the Marriage and Matrimonial Property Law Amendment Act, 1988, and in respect of which the matrimonial property system was governed by section 22 of the Black Administration Act, 1927 (Act No. 38 of 1927), may—

- (a) if they are married in community of property, cause the provisions of Chapters II and III of this Act to apply to their marriage; or
- (b) if they are married out of community of property and the wife is subject to the marital power of the husband, cause the provisions of Chapter II of this Act to apply to their marriage,

by the execution and registration in a registry within two years after the said commencement or such longer period, but not less than six months, determined by the Minister by notice in the *Gazette*, of a notarial contract to that effect, and in such a case those provisions apply from the date on which the contract was so registered.

[Sub-s. (3) added by s. 4 (c) of Act No. 3 of 1988.]

**26. . . . .**

[S. 26 substituted by s. 5 of Act No. 3 of 1988 and repealed by s. 31 of Act No. 132 of 1993.]

**27. . . . .**

[S. 27 repealed by s. 2 of Act No. 81 of 1987.]

**28.** *Amends section 3 (1) of the Deeds Registries Act, No. 47 of 1937, by substituting paragraph (k)—see title DEEDS OFFICE.*

**29.** *Substitutes section 17 of the Deeds Registries Act, No. 47 of 1937—see title DEEDS OFFICE.*

**30.** *Amends section 25 (3) of the Deeds Registries Act, No. 47 of 1937, by substituting the expression “section 17 (1)” for the expression “subsection (3) of section seventeen”—see title DEEDS OFFICE.*

**31.** *Amends section 45 of the Deeds Registries Act, No. 47 of 1937, by substituting subsection (1)—see title DEEDS OFFICE.*

**32.** *Inserts section 89 in the Deeds Registries Act, No. 47 of 1937—see title DEEDS OFFICE.*

**33.** *Amends section 2 of the Apportionment of Damages Act, No. 34 of 1956, as follows:—paragraph (a) substitutes subsection (1A); and paragraph (b) deletes the first proviso to subsection (6) (a)—see title DAMAGES.*

**34.** *Inserts section 24A in the Marriage Act, No. 25 of 1961.*

**35.** *Amends section 29 (1) of the Magistrates’ Courts Act, No. 32 of 1944, by inserting paragraph (eA)—see title COURTS.*

**36.** *Amends section 7 of the Divorce Act, No. 70 of 1979, as follows:—paragraph (a) substitutes subsection (2); and paragraph (b) adds subsections (3), (4), (5) and (6).*

**37. Repeal of laws.**—The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

**38. Short title and commencement.**—(1) This Act shall be called the Matrimonial Property Act, 1984 and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.

## Schedule

<i>No. and year of law</i>	<i>Title or subject</i>	<i>Extent of repeal</i>
The Perpetual Edict of 4 October 1540 .....	The Perpetual Edict .....	Section 17 in so far as it is in force in the Republic
The Political Ordinance of 1 April 1580 .....	The Political Ordinance .....	Sections 3 and 13 in so far as they are in force in the Republic
Law No. 13 of 1883 (Natal).....	To amend the Law of Divorce	Sections 10 and 11
Act No. 37 of 1953 .....	Matrimonial Affairs Act, 1953	Section 3
Act No. 13 of 1976 .....	Matrimonial Affairs Amendment Act, 1976 .....	The whole



LexisNexis®