Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:

GENERAL EXPLANATORY NOTE:

Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with solid line indicate insertions in existing enactments.

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**ACT**

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

(Afrikaans text signed by the State President.)

(Assented to 3 July 1984.)

**BE IT ENACTED** by the State President and the House of Assembly of the Republic of South Africa, as follows:

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

   (i) "banking institution" means a banking institution as defined in section 1 of the Banks Act, 1965 (Act No. 23 of 1965); (ii)
   
   (ii) "building society" means a building society as defined in section 1 of the Building Societies Act, 1965 (Act No. 24 of 1965); (iii)
   
   (iii) "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 (i), a magistrate's court which has jurisdiction in the matter concerned; (vii)
   
   (iv) "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); (iv)
   
   (v) "joint estate" means the joint estate of a husband and wife married in community of property; (v)
   
   (vi) "listed securities" means listed securities as defined in section 1 of the Stock Exchanges Control Act, 1947 (Act No. 7 of 1947); (vi)
   
   (vii) "separate property" means property which does not form part of a joint estate. (i)

**CHAPTER 1**

**ACCRUAL SYSTEM**

2. 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. (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...
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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. (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. (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.

6. (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.
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(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. 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. (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, 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. 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. 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. Subject to the provisions of section 25, the marital power which a husband has under the common law over the person and property of his wife is hereby abolished in respect of marriages entered into after the commencement of this Act.
12. Subject to the provisions of this Act, the effect of the abo-
lition of the marital power is to do away with the restrictions
which the marital power places on the capacity of a wife to con-
tract and to litigate.

13. The provisions of this Chapter do not affect the law relat-  

Savings.

CHAPTER III

MARRIAGES IN COMMUNITY OF PROPERTY

14. Subject to the provisions of this Chapter, a wife in a mar-
riage 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. (1) Subject to the provisions of subsections (2), (3) and
(7), a spouse in a marriage in community of property may per-
form 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 insti-
tution, forming part of the joint estate;
   (d) alienate or pledge any jewellery, coins, stamps, paint-
ings 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 so-
ciety or the Post Office Savings Bank of the Republic
of South Africa;
   (f) as a credit receiver enter into a credit agreement as
defined in the Credit Agreements Act, 1980 (Act No.
75 of 1980), and to which the provisions of that Act ap-
ply in terms of section 2 thereof;
   (g) as a purchaser enter into a contract as defined in the
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;
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(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. (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 5 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 10 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. (1) A spouse married in community of property shall not 15 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 25 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 30 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) An application for the surrender of a joint estate shall be 35 made by both spouses, and an application for the sequestration of a joint estate shall be made against both spouses.

(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 necessities for the joint household, the spouses may be sued jointly or 40 severally therefor.

CHAPTER IV
GENERAL PROVISIONS

18. Notwithstanding the fact that a spouse is married in community of property—

(a) any amount recovered by him by way of damages, other than damages for patrimonial loss, by reason of a delict committed against him, does not fall into the joint estate but becomes his separate property;

(b) he may recover from the other spouse damages, other than damages for patrimonial loss, in respect of bodily injuries suffered by him and attributable either wholly or in part to the fault of that spouse.

19. When a spouse is liable for the payment of damages, including damages for non-patrimonial loss, by reason of a delict certain damages excluded from community and recoverable from other spouse.
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. (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. (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 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, may cause the provisions of Chapter I to apply in respect of their marriage by the execution and registration in a registry within two years after that commencement of a notarial contract by which community of property and community of profit and loss are excluded, may cause the provisions of Chapter I to apply in respect of their marriage by the execution and registration in a registry within two years after that commencement of a notarial contract by which community of property and community of profit and loss are excluded, may cause the provisions of Chapter I to apply in respect of their marriage by the execution and registration in a registry within two years after that commencement of a notarial contract by which community of property and community of profit and loss are excluded, may cause the provisions of Chapter I to apply in respect of their marriage by the execution and registration in a registry within two years after that commencement of a notarial contract by which community of property and community of profit and loss are excluded, may cause the provisions of Chapter I to apply in respect of their marriage by the execution and registration in a registry within two years after that commencement of a notarial contract by which community of property and community of profit and loss are excluded, may cause the provisions of Chapter I to apply in respect of their marriage by the execution and registration in a registry within two years after that commencement of a notarial contract to that effect.

(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 at any time within one year after the commencement of this Act 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.

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

24. (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. (1) The provisions of Chapters II and III of this Act do not apply to marriages in respect of which the matrimonial property system is governed by section 22 of the Black Administration Act, 1927 (Act No. 38 of 1927).

(2) Notwithstanding anything to the contrary in any law or the common law contained, the spouses to a marriage, other than a marriage contemplated in subsection (1), entered into before the commencement of this Act may—

(a) if they are married in community of property, cause the provisions of Chapters II and III to apply to their marriage;
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(b) if they are married out of community of property and
the marital power of the husband was not excluded in
terms of the antenuptial contract concerned, cause the
provisions of Chapter II to apply to their marriage,
5 by the execution and the registration in a registry within two
years after the said commencement 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.

26. Sections 1 and 2 of the Matrimonial Affairs Act, 1953 (Act
10 No. 37 of 1953), do not apply to marriages in respect of which
the provisions of section 25 (2) of this Act have been applied or
to marriages concluded after the commencement of this Act,
other than marriages in respect of which the matrimonial prop-
erty system is governed by section 22 of the Black Administra-
tion Act, 1927 (Act No. 36 of 1927).

27. Section 1 of the Succession Act, 1934 (Act No. 13 of
1934), is hereby amended by the substitution for paragraph (b)
of subsection (1) of the following paragraph:
"(b) if the spouses were married out of community of prop-
erty and if the deceased spouse leaves any descendant
who is entitled to succeed ab intestato, the surviving
spouse shall succeed—
(i) in the case where the provisions of Chapter I of
the Matrimonial Property Act, 1984, are not ap-
licable to such a spouse, to the extent of a child’s
share or to so much as does not exceed fifty thousand
rand in value (whichever is the greater); and
(ii) in the case where the provisions of that Chapter
are applicable to such a spouse, to the extent of a
child’s share or to so much as together with his or
her share of the accrual of the estates of the
spouses, determined in accordance with that Chap-
ter, does not exceed fifty thousand rand in value
(whichever is the greater);”.

28. Section 3 of the Deeds Registries Act, 1937 (Act No. 47 of
1937), is hereby amended by the substitution for paragraph (k)
of subsection (1) of the following paragraph:
“(k) register antenuptial contracts, including orders under
section 20, and contracts contemplated in section 21, of
the Matrimonial Property Act, 1984, and register such
notarial deeds of donation (including a donation to be Act.
held in trust) and such other notarial deeds having re-
servation to persons and property within the area served
by the registry in question as are required or permitted
by law to be registered;”.

29. The following section is hereby substituted for section 17
of the Deeds Registries Act, 1937:
“Registration of immovable property in
the name of married persons.
17. (1) From the commencement of the Matrim-
ional Property Act, 1984, immovable property,
real rights in immovable property and notarial deeds
which would upon transfer, cession or registration
thereof form part of a joint estate shall be registered
in the name of the husband and the wife, excluding
agricultural land as defined in the Subdivision of
Agricultural Land Act, 1970 (Act No. 70 of 1970),
unless that transfer, cession or registration takes
place only in the name of a partnership, and the hus-
band or wife is involved therein only in the capacity
of partner in that partnership.
(2) Every deed executed or attested by a registrar, or attested by a notary public and required to be registered in a deeds registry, and made by or on behalf of or in favour of any person, shall—

(a) state the full name and marital status of the person concerned;
(b) where the marriage concerned is governed by the law in force in the Republic or any part thereof, state whether the marriage was contracted in or out of community of property;
(c) where the person concerned is married in community of property, state the full name of his spouse; and
(d) where the marriage concerned is governed by the law of any other country, state that the marriage is governed by the law of that country.

(3) Where a marriage in community of property has been dissolved by the death of one of the spouses before property which on transport or cession thereof would have formed part of the joint estate could be transferred or ceded, that property shall be transferred or ceded to the joint estate of the spouses, pending the administration thereof, and is, subject to the provisions of any disposition with regard to that property, deemed to be the joint property of the surviving spouse and of the estate of the deceased spouse.

(4) If immovable property forming part of a joint estate is registered in a deeds registry in the name of either the husband or the wife, the registrar shall on the written application of the husband or the wife, as the case may be, if he is satisfied as to the relevant facts, make a note on the title deed of that property, or if the title deed can for any reason not be produced to him, only on the registry duplicate thereof, and in the appropriate registers, to the effect that it is property in respect of which the provisions of section 15 (2) (a) of the Matrimonial Property Act, 1984, apply.

(5) The registration of a right to a mineral in the name of a husband and a wife according to the provisions of subsection (1) shall not be construed as constituting the division of any right to any mineral or minerals in respect of any land between that husband and wife into undivided shares, or an increase in the number of holders of undivided shares in any right to any mineral or minerals in respect of any land as contemplated in section 2 of the Mineral Laws Supplementary Act, 1975 (Act No. 10 of 1975).

(6) A woman married out of community of property shall be assisted by her husband in executing any deed or other document required or permitted to be registered in any deeds registry or required or permitted to be produced in connection with any such deed or document, unless the marital power has been excluded or unless the assistance of the husband is in terms of this Act or on other grounds deemed by the registrar to be unnecessary.

30. Section 25 of the Deeds Registries Act, 1937, is hereby amended by the substitution in subsection (3) for the expression "subsection (3) of section seventeen" of the expression "section 17 (1)".

Amendment of section 25 of Act 47 of 1937, as amended by section 10 of Act 43 of 1962.
31. Section 45 of the Deeds Registries Act, 1937, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If immovable property or a lease under any law relating to land settlement or a bond is registered in a deeds registry in the name of the survivor of two spouses who were married in community of property, or in the name of the joint estate of such spouses, or in the name of both such spouses, and [such survivor] the surviving spouse has lawfully acquired the share of the deceased spouse in the property, lease or bond, the registrar shall on written application by the executor in the estate of the deceased spouse and by [such survivor] the surviving spouse save where [such survivor] the surviving spouse has signed as executor, accompanied by such other documents as may be prescribed, endorse on the title deeds of the property or on the deed of lease or on the bond that the [survivor] surviving spouse is entitled to deal with such property, lease or bond, and thereupon [such survivor] he shall be entitled to deal therewith as if he had taken formal transfer or cession into his own name of the share of the deceased spouse in the property, lease or bond."

32. The following section is hereby inserted in the Deeds Registries Act, 1937, after section 88:

Insertion of section 89 in Act 47 of 1937.

33. Section 2 of the Apportionment of Damages Act, 1956 (Act No. 34 of 1956), is hereby amended—

Amendment of section 2 of Act 34 of 1956, as amended by section 1 of Act 58 of 1971.

(a) by the substitution for subsection (1A) of the following subsection:

"(1A) [Subject to the provisions of the first proviso to subsection (6) (a)] A person shall for the purposes of this section be regarded as a joint wrongdoer if he would have been a joint wrongdoer but for the fact that he is married in community of property to the plaintiff; and;

(b) by the deletion of the first proviso to subsection (6) (a)."

34. The following section is hereby inserted in the Marriage Act, 1961 (Act No. 25 of 1961), after section 24:


"Consequences and dissolution of marriage. 24A. (1) Notwithstanding anything to the contrary contained in any law or the common law a marriage between persons of whom one or both are minors shall not be void merely because the parents or
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Marriage for want of consent of parents or guardian. — Marriage for want of consent of parents or guardian, or a commissioner of child welfare whose consent is by law required for the entering into of a marriage, did not consent to the marriage, but may be dissolved by a competent court on the ground of want of consent if application for the dissolution of the marriage is made—
(a) by a parent or guardian of the minor before he attains majority and within six weeks of the date on which the parent or guardian becomes aware of the existence of the marriage; or
(b) by the minor before he attains majority or within three months thereafter.
(2) A court shall not grant an application in terms of subsection (1) unless it is satisfied that the dissolution of the marriage is in the interest of the minor or minors.

25. Section 29 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), is hereby amended by the insertion after paragraph (e) of the following paragraph:
“(eA) actions in terms of section 16 (1) of the Matrimonial Property Act, 1984, where the claim or the value of the property in dispute does not exceed R5 000;”.

Amendment of section 29 of Act 32 of 1944, as substituted by section 27 of Act 94 of 1974 and amended by section 1 of Act 56 of 1984.

36. Section 7 of the Divorce Act, 1979 (Act No. 70 of 1979), is hereby amended—
(a) by the substitution for subsection (2) of the following subsection:
“(2) In the absence of an order made in terms of subsection (1) with regard to the payment of maintenance by the one party to the other, the court may, having regard to the existing or prospective means of each of the parties, their respective earning capacities, financial needs and obligations, the age of each of the parties, the duration of the marriage, the standard of living of the parties prior to the divorce, their conduct in so far as it may be relevant to the break-down of the marriage, an order in terms of subsection (3) and any other factor which in the opinion of the court should be taken into account, make an order which the court finds just in respect of the payment of maintenance by the one party to the other for any period until the death or remarriage of the party in whose favour the order is given, whichever event may first occur.”; and
(b) by the addition of the following subsections:
“(3) A court granting a decree of divorce in respect of a marriage out of community of property entered into before the commencement of the Matrimonial Property Act, 1984, in terms of an antenuptial contract by which community of property, community of profit and loss and accrual sharing in any form are excluded, may, subject to the provisions of subsection (4), (5) and (6), on application by one of the parties to that marriage, in the absence of any agreement between them regarding the division of their assets, order that such assets, or such part of the assets, of the other party as the court may deem just be transferred to the first-mentioned party.
(4) An order under subsection (3) shall not be granted unless the court is satisfied that it is equitable and just by reason of the fact that the party in whose favour the order is granted, contributed directly or indirectly to the maintenance or increase of the estate of the other party during the subsistence of the marriage, either by the rendering of services, or the saving of expenses which would otherwise have been incurred, or in any other manner.
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(5) In the determination of the assets or part of the assets to be transferred as contemplated in subsection (3) the court shall, apart from any direct or indirect contribution made by the party concerned to the maintenance or increase of the estate of the other party as contemplated in subsection (4), also take into account—
(a) the existing means and obligations of the parties;
(b) any donation made by one party to the other during the subsistence of the marriage, or which is owing and enforceable in terms of the antenuptial contract concerned;
(c) any order which the court grants under section 9 of this Act or under any other law which affects the patrimonial position of the parties; and
(d) any other factor which should in the opinion of the court be taken into account.

(6) A court granting an order under subsection (3) may, on application by the party against whom the order is granted, order that satisfaction of the order 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.

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

38. (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

<table>
<thead>
<tr>
<th>Number and year of law</th>
<th>Title or subject</th>
<th>Extent of repeal</th>
</tr>
</thead>
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<tr>
<td>The Perpetual Edict of 4 October 1540</td>
<td>The Perpetual Edict</td>
<td>Section 17 in so far as it is in force in the Republic</td>
</tr>
<tr>
<td>The Political Ordinance of 1 April 1580</td>
<td>The Political Ordinance</td>
<td>Sections 3 and 13 in so far as they are in force in the Republic</td>
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<tr>
<td>Law No. 13 of 1883 (Natal)</td>
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<td>Act No. 37 of 1953</td>
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<td>Act No. 13 of 1976</td>
<td>Matrimonial Affairs Amendment Act, 1976</td>
<td>The whole</td>
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Repeal of laws.

Short title and commencement.