



SPLITTING UP, SPLITTING ASSETS

When spouses split it's an emotional time for everyone, but it's important to safeguard your money and get what you deserve in a divorce. Here's what to consider

DIVORCE is a highly emotional time and affects all areas of one's life. One of the biggest is finances, and the emotional nature of a marriage breaking down means that many people make irrational decisions about this sensitive subject.

It's common to hear statements like "He/she can keep it all, I don't want any money". In fact, you're fully entitled to assets and cash, which could possibly help ease the pain of the split.

DIVORCE IN SOUTH AFRICA

The course of a divorce is determined by the type of marriage.

- * Civil marriages (such as court weddings or church weddings in the presence of a registered marriage officer) are ended according to the rules in the Divorce Act 70 of 1979.

- * Marriages in terms of African Customary

Law are ended according to the civil law and are also under the Divorce Act, but some of the outcomes are determined by custom and tradition, too.

Muslim and Hindu marriages are ended in terms of the rites and rituals of the religion. An Islamic Marriages Bill is still before Parliament to recognise Islamic unions legally.

THE DIVORCE ACT AND FINANCES

The marriage contract decided upon before the marriage will determine the division of assets; we'll look at the different forms of marriage in more detail next month.

A prenuptial agreement, if there is one, will determine how assets are split and, if there is no premarital contract, then the law will determine the division.

The default legal position is that civil marriages and African customary marriages after 1998 are in community of property

with accrual. This means all assets, cash and debt are shared, including property and investments. Accrual means that everything you earn or buy after marriage also becomes part of the joint estate.

If the marriage is out of community of property without accrual, then each spouse keeps their own property from before the marriage and keeps whatever they earn or acquire during the marriage.

The laws that were in place when you got married will determine what property rule applies to your marriage. If you were married traditionally before 1998, the marriage is treated as out of community of property. If you got married after 1998, then it's in community of property.

CUSTOMARY MARRIAGES

Customary marriages are similar to civil marriages because a court must issue the divorce order, and the divorce will only