

IS IT POSSIBLE TO CANCEL OR AMEND AN ANTENUPTIAL CONTRACT?

Let us look at 3 possible scenarios to answer this question:

Donald and Sally decide to get married. They go and see an attorney, who assists them in executing an Antenuptial Contract (ANC), subject to the accrual system. The accrual system allows each party to a marriage to record the starting value of their estate at the commencement of the marriage, and then to share equally in the growth of the other's estate during the course of the marriage, when the marriage ends. The lawyer ensures that the ANC is duly registered at the Deeds Office. Some weeks later, Donald finds himself standing at the altar, waiting for his lovely bride to come down the aisle. True to tradition, Sally is running an hour late. Donald hears a message coming through on his cell phone. He checks it to see a message that he has won a R75 000 000 lottery! Just there, Donald decides that marriage is over-rated, and he disappears! Sally is of course scorned and instructs the lawyer to have all traces of an ANC removed from the Deeds Office. Well, here is the thing. Antenuptial Contracts cannot be deleted off the Deeds Office records. Once recorded, they remain there permanently. The parties can however conclude a Notarial Agreement to cancel the ANC, which would serve as proof of the cancellation - but that would require Donald to come out of hiding, which his own lawyer of course advised him against in the strongest terms possible, for his own safety!

Let's assume now that Donald wasn't quite the horrible creature in the story above. Instead, upon seeing his lovely bride, he tells Sally about his winnings but, being an astute businessman, he plays his trump card and insists that they postpone the wedding, so that they can first amend the ANC, because he now wants to exclude these winnings from the accrual. Is this possible? Because an ANC only becomes effective after the solemnization of the marriage, there is no reason why the parties thereto cannot exercise their common law right to amend or even cancel such a contract, by agreement, before they get married. Sally is of course not very pleased with either the change to the ANC or the postponement but at least realizes that being married to a multi-millionaire should bring with it some measure of benefit and agrees to these terms. Such an amending agreement will have to be entered into BEFORE the conclusion of the marriage and must then be registered in the Deeds Office, just like the original ANC.

Now let's assume that Donald is a complete gentleman. He keeps the winnings a secret and allows the wedding to proceed, and for his lovely bride to glow in the moment! Whilst on honeymoon, he shares his good fortune but still insists on wanting to change the ANC once they return home. Can it be changed; can Donald force Sally to accept the new terms, and can this change be registered in the Deeds Office? Sally calls her daddy, who happens to be a partner at a firm called Miltons and learns that firstly, an ANC cannot be changed without both parties agreeing. She also learns that it is a general rule in our law that an ANC cannot be amended after conclusion of the marriage, even with both parties' consent. It can only be amended by a Court order if the contents of the written contract did not give effect to the actual agreement between the parties. Sally then realizes that if Donald were to die any time soon, she would stand to share in a substantial sum of money, given that her and Donald's starting values on the ANC, were Nil! She thus stands to gain one half of the winnings - R37 500 000 in accrued value, should Donald die.

Mysteriously and tragically, on the last day of their honeymoon, whilst doing a deep-sea deep scuba dive exploring the hull of a sunken ship, Donald's air supply ran out. RIP Donald. Should anyone be interested, Sally is still single.