

I am married out of community of property with the accrual system. How does the accrual system influence the drafting of my will?

Spouses, who are married out of community of property with the accrual system, should remember that the accrual claim should be applied and paid before the rest is inherited by the heirs. Where the testator or testatrix therefore, for example, would like the surviving spouse to receive 50% of the estate on the one hand and the children the other 50% on the other hand, it is very important to consider the effect of the accrual claim when drafting the will. In terms of the formula prescribed in the Matrimonial Properties Act the spouse, whose accrual during the subsistence of the marriage was smaller, is entitled to claim half of the difference in the accrual of the two estates.

Where the husband therefore always worked and the wife looked after the household and the children such, an accrual claim would normally constitute a substantial portion of the husband's estate. This is often not considered by the estate planner and can consequently lead to the surviving spouse receiving more than intended. The estate planner's concern in such a case is normally that the surviving spouse will not properly look after his or her children and would also not nominate them as beneficiaries in terms of his or her will.

There is, unfortunately, no easy solution to cater for this problem, but several options can be considered.

One is to trust the surviving spouse and to accept that he or she will based on a moral duty look after the children and provide for them in a will. This will, however, not always give enough peace of mind to the estate planner.

A further option would be to leave half of the estate to the children and the other half to the surviving spouse.

Another possibility is to leave the estate to the children subject to a usufruct in favour of the surviving spouse.

Alternatively everything can be bequeathed to a trust with the surviving spouse and the children as joint beneficiaries with at least one independent outsider as one of the trustee.

Each one of these alternatives can, however, lead to problems. It is therefore important that proper planning is done to ensure that the most appropriate option is chosen for the specific circumstances.

You can complete the will instruction sheet here: [Testament Instruksievel / Will Instruction Sheet](#)