

## SOUTH AFRICA PRENUPTIAL AGREEMENT

BE IT KNOWN, this agreement is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ and \_\_\_\_\_.

Whereas, the parties contemplate legal marriage under the laws of South Africa, and it is their mutual desire to enter into this agreement so that they will continue to own and control their own property.

**WITNESSETH:**

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The premises being considered, upon consideration of the mutual promises hereinafter set forth and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**I. Effective Date of Agreement.** This Agreement shall take effect only upon the lawful the marriage of the parties to one another. Further, the effective date of this Agreement is the date upon which the parties are legally married.

### **II. Separate Property.**

A. Definition of "Separate Property". As used in this agreement, the term "Separate Property" means all rights and interests in property of any kind, including contingent interests, owned by each party on the effective date of this agreement. The term "Separate Property", as used in this agreement, is further defined below.

B. Earnings After Effective Date of Agreement Also Separate Property.

1. Earnings During Marriage--Passive Income. Passive income derived from property of any type shall have the same character for purposes of this agreement as the property from which it is derived. Thus, passive income from Separate Property earned or accruing after the effective date of this agreement shall be the Separate Property of the owner of that asset. Likewise, passive income from marital or community property shall have that character once earned or accrued.

- a. The term "passive income" means dividends, capital gains, interest, rents, royalties, disruptions and other income accrued from property of a party and obtained after the effective date of this agreement.
- b. The term "passive income" also includes accrued but unrecognized appreciation in the value of capital assets classified as separate property.
- c. In the case of ownership of interests in corporations as separate property, all dividends therefrom are to be considered passive.
- d. In the case of ownership of interests in trusts and partnerships which do not operate a business enterprise, all distributions and income allocations therefrom to a party are to be considered passive.
- e. In the case of ownership of interests in trusts, partnerships, limited liability companies (LLCs) and like business entities which operate a business enterprise, all distributions and income allocations therefrom to a party are to be considered passive unless a party materially participates in the business. Where a party materially participates in a business operated by a trust, partnership, LLC, or like business entity, all income and distributions from said entity are to be treated as earned income.
- f. Income not falling within the definition of "passive income" is to be considered earned income and treated as set forth in the next section entitled, "Earnings During Marriage--Earned Income".
- g. The term "materially participates" has the same meaning as given under the tax laws of South Africa for determining when a partner materially participates in a partnership.

2. Earnings During Marriage--Earned Income.

- a. Earned income of the parties during the marriage shall be considered the Separate Property of either party during the marriage.
- b. The term "earned income" means any income obtained by a party after the effective date of his agreement that does not meet the definition of passive income as set forth in the previous section. Types of earned income include, but are not limited to, salary and bonus from employment, earnings derived from the performance of services as an independent contractor, and income derived from a business run as a sole proprietorship.

3. Common Living Expenses.

- a. Common Living Expenses incurred during the marriage shall be paid first from the liquid assets of the parties NOT classified as Separate Property under this agreement (i.e., from marital property, community property, or quasi-community property).
- b. Those Common Living Expenses which cannot be paid from said liquid assets of the parties are to be paid from the Separate Property of the parties in the following percentages: \_\_\_% by \_\_\_\_\_ and \_\_\_% by \_\_\_\_\_.

8. Contributions and accumulations in retirement plans and accounts: In regard to retirement plans and accounts, the parties covenant and agree that all accumulations in, and contributions to, retirement plans and accounts whether **before or during** the marriage shall be the

Separate Property of the party who owns the account or is the plan beneficiary.

C. Waiver of Rights and Claims To Separate Property. Except as otherwise provided herein, each party waives and releases all rights, interests in and claims to the Separate Property of the other party arising under common or statutory law of any jurisdiction (present or future). This waiver does not apply to any right a party may possess to seek assistance from the federal government as a surviving spouse such as under the Social Security Act.

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**V. Waiver of Right to Independent Legal Counsel.** Both parties affirm that they have had an adequate opportunity to consult with an independent legal counsel regarding this agreement prior to its execution. To the extent either party has not consulted with independent legal counsel, the parties hereby expressly and voluntarily waive the opportunity to consult with independent legal counsel before entering into this agreement.

**VI. Cohabitation.** Each party waives any and all claims, including contingent claims, against the party deriving from periods of cohabitation, if any, prior to their marriage.

**VII. Debts.** Each party shall pay and be responsible for all debts incurred by the party prior to solemnization of the marriage from that party's Separate Property. Further, each party agrees to indemnify the other for any damages or losses incurred by the other party relative to his or her pre-marriage debts that were not paid pursuant to this agreement.

**VIII. Child Support.** Nothing in this agreement shall be construed as relieving either party of an obligation to support his or her minor children.

**IX. Financial Disclosure.** Each party has submitted summary financial information attached hereto as Schedule A. Each party acknowledges an opportunity to view said financial information prior to execution of this document and to inquire further as to the financial information provided by the other; however, the signing of this agreement does not in any way constitute a waiver of the right of full disclosure regarding the other party's financial position.

**XII. Severability.** In the event any provision of this Agreement is deemed to be void, invalid, or unenforceable, that provision shall be severed from the remainder of this Agreement so as not to cause the invalidity or unenforceability of the remainder of this Agreement. All remaining provisions of this Agreement shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

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**XIV. Acknowledgements.** Each party acknowledges that he or she has had an adequate opportunity to read and study this Agreement, to consider it, to consult with attorneys if he or she has so desired, without any form of coercion, duress or pressure.

**Definition of Terms Applicable to this Agreement:**

As used in this agreement, the following terms shall the designated definition:

- A. "Consulted with an attorney" means an instance of a party having shown the prenuptial agreement to an individual licensed to practice law in South Africa **and** having received comments of any kind from said attorney regarding the prenuptial agreement prior to the time the agreement was signed by said party.
- B. "Debts" means all liabilities and claims of a monetary nature that any party may possess against you such as a bank loan, credit card debt, tax debts including contingent debts. The term "debts", in our agreement forms, encompasses "contingent" claims for which fault or a value have not, as yet, been determined.
- C. "Intestate succession laws" means the probate laws of the applicable jurisdiction that control distribution of the assets of an estate for a decedent dying without a valid last will.
- D. "Omitted spouse" means a surviving spouse who has been omitted from the last will of the decedent and seeks to receive a forced share of the decedent's probate estate under applicable probate law. The term "omitted spouse" also includes a surviving spouse named as a beneficiary in the last will of the decedent but whose bequest under said last will is less than otherwise obtainable as a forced share under applicable probate law.

**Schedule A  
Summary Financial Statements  
of the Parties**

A.	ASSETS	Estimated Fair Market Value	Estimated Fair Market Value
	NAME		
1	Cash		
2	Stocks, bonds, and marketable securities		
3	Closely held business interest		
4	Home Equity		
5	Other Real Estate		
6	IRAs		
7	Other Retirement Assets		
8	Trust assets		
9	All other assets		
	<b>TOTAL ASSETS</b>		
B.	DEBTS		
	NAME		
10	Credit Card Debt		
11	Tax Debts		
12	Other Debts		
	<b>TOTAL DEBTS</b>		

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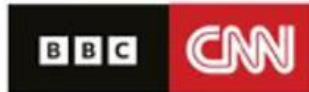
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