

Cross-Border Marriage Property Checklist

On 23 June 2026 the Western Cape High Court scrapped the old rule that the **husband's home country** decides your marriage property. A new gender-neutral, five-tier test now applies. Use this checklist to see where you stand before you speak to an attorney.

STEP 1 • Does the new rule affect you? Tick any that apply

- ☐ We married outside South Africa.
- ☐ My spouse or I was born, domiciled or living abroad when we married.
- ☐ My spouse or I held (or holds) foreign citizenship.
- ☐ One of us was on an overseas posting or secondment when we married.
- ☐ We are a same-sex couple married here or abroad.

One tick or more? The new test applies to your marriage. Continue below.

STEP 2 • Work down the five tiers, stop at the first that fits

- 1. Agreed choice of law.** Did you agree, before or at the wedding, which country's law would govern your property? It counts only if that country has a substantial link to at least one of you.
- 2. Common domicile.** Did you both treat the same country as your permanent home when you married?
- 3. Common habitual residence.** Were you both actually living in the same country when you married?
- 4. Common nationality.** Did you both hold the same nationality when you married?
- 5. Closest connection.** Failing all of the above, which country were you jointly most closely connected to at the marriage?

All five are assessed as at the date of your marriage. The first tier that fits gives you your answer.

STEP 3 • The two-year antenuptial contract window

- ☐ Find your antenuptial contract and check whether it names a governing law.
- ☐ If the named country has no real connection to either spouse, the choice survives only until **June 2028**.
- ☐ Book an attorney review now, so any amendment is registered well before the deadline.

STEP 4 • Documents to gather before you call

- ☐ Marriage certificate (with a sworn translation if not in English).
- ☐ Antenuptial or prenuptial contract, local or foreign.
- ☐ Both spouses' passports, ID documents and any naturalisation certificates.
- ☐ Proof of where each of you lived at the date of the marriage (leases, visas, work permits).
- ☐ Your wills and any divorce or estate papers already in progress.

Not sure which tier applies to you? Get a plain-English answer.

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