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Recognition of customary marriage act pdf

You are here: SAFLII & Database & South Africa: Consolidated Acts & Recognition of the Common-Marriage Act of 1998] Noteup Recognition of Customary Marriages Act 1998 PDF format RTF format Last checked: 30 October 2019 RECOGNITION OF THE LAW ON COMMON MARRIAGES[Updated until 9 August 2010] Law 120 of 1998 (Notice 1553, G. 19539), Dec. R66, G. 21700, Law 42 of 2001 (Notice 1313, G. 22912, c.i.o December 7, 2001), Law 31 of 2008 (Notice 1201, G. 31579, c.i.o 9 August 2010 [Dec. R41, G. 33448]), On November 30, 2000, the President has sworn in the next Act, which is thereby being published for general information. GENERAL CLARIFICATIONS: Words underlined by a hard line indicate insertion into existing agathas. 10 November 1998)

2019 to specify applications for a valid normal marriage; regulate the registration of common marriages; ensure equal status and ability of spouses in normal marriages; regulate the ownership consequences of ordinary marriages and the ability of spouses of such marriages; regulate the breakdown of ordinary marriages; ensure the adoption of regulations; repeal certain provisions of certain laws; and ensure the issues that are linked there. BE ADOPTED by the Parliament of the Republic of South Africa, as follows. REGULATION SECTIONS Definitions Recognition of common marriages Requirements for the validity of common marriages Registration of common marriages Age for minor Equal status and capacity of spouses Proprietary consequences of normal marriages and contractual ability of spouses The breakdown of the usual Marriages Age of majority change of the marriage system Amendment of the law Repeal of the law The brief title OF Schedule: Repealing the law In this Law, unless otherwise indicated by the context - the court means the High Court or the regional department court considered in section 29. [court subs by with 19 Act 42 of 2001, with 10 laws 31 of 2008.] customary law means customs and customs that are traditionally observed among the indigenous African peoples of South Africa and which form part of the culture of these peoples; a normal marriage means a marriage concluded in accordance with normal law, lobolo means assets in cash or in kind, whether known as lobolo, bogadi, bohali, xuma, lumalo, thaka, ikhazi, magadi, emabheka or under any other name, which the prospective husband or head of his family undertakes to give to the head of the future wife's family in the consideration of customs. Minister means Minister of the Interior; prescribed by the regulation referred to in Section 11; registration officer means any person appointed by a minister or official acting on the basis of the Minister's written authorisation as a registration officer for the purposes of this Law, this Law includes regulations; and traditional leader means any person who, within the meaning of customary law or any other law, has a position in the traditional ruling hierarchy. Recognition of ordinary marriages (1) Marriage which is a valid marriage under customary law and which exists at the beginning of this Law is recognized for all purposes as marriage. (2) A common marriage concluded after the beginning of this Law, which complies with the requirements of this Law, is recognized for all purposes as marriage. (3) If a person is a spouse in more than one normal marriage, all applicable ordinary marriages concluded before the beginning of this Law are recognised as marriages for all purposes. (4) If a person is a spouse in more than one normal marriage, all such marriages which have concluded after the beginning of this Law, which comply with the provisions of this Law, are recognised as marriages for all purposes. Requirements for the validity of ordinary marriages (1) In order for a normal marriage to be concluded after the beginning of this Law, it is valid - (a) future spouses - (i) must be above the age of 18 years; and (ii) must both agree to marry each other in accordance with normal law; and (b) the marriage must be negotiated and concluded or celebrated in accordance with normal law. (2) Save as provided for in Section 10(1), no spouse in a normal marriage has jurisdiction to marry under the Marriage Act of 1961 (3) (a) If any of the potential spouses are minor, and his parents or not parents, his legal guardian, must consent to marriage. (b) If the consent of a parent or legal guardian cannot be obtained, Section 25 of the Marriage Act of 1961 (4) (a) Despite subsection (1)(a)(i), a minister or any public service officer authorised by him or her in writing, may grant written permission to a person under the age of 18 to enter into a normal marriage if the minister or the official considers such a marriage to be desirable and in the interest of the parties to whom it is concerned. (b) Such permission shall not exempt the parties to the proposed marriage from the obligation to fulfil all other legally prescribed requirements. (c) If a person over the age of 18 has entered into a normal marriage without the written permission of the minister or the relevant official, the minister or and in the interest of the parties concerned, and if the marriage was in any other respect in accordance with this Law, declare the marriage in writing a valid normal marriage. (5) Subject to subsections (4), Section 24A of the Marriage Act 1961, it applies to the normal marriage of a minor who has been concluded without the consent of a parent, guardian, child welfare commissioner or judge, as the case may be. (6) The prohibition of normal marriage between persons due to their relationship with blood or affinities is defined by normal law. Registration of ordinary marriages (1) Spouses of a normal marriage have a duty to ensure that their marriage is registered. (2) Or the spouse may submit an application to the registry officer in the prescribed registration form of his normal marriage and must provide the registration officer with the prescribed information and any additional information that the applicant may require in order to satisfy the existence of the marriage. (3) A common marriage - (a) which has been concluded prior to the beginning of this Law and which is not registered within the meaning of any other law, must be registered within 12 months of that commencement or for such an extended period which the Minister may from time to time prescribe the notices in the Gazette; or (b) entered after the beginning of this Law, they must register within three months of the marriage or for such an extended period that the Minister may from time to time prescribe the notices in the Gazette. (4) (a) The clerk who has applied must, if satisfied with the fact that the spouses have entered into a valid normal marriage, register the marriage by recording the identity of the spouses, the date of marriage, each lobby to which it consents and any other prescribed details. (b) The registration officer shall issue a certificate of registration to the spouses, bearing the required details. (5) (a) If, for any reason, a normal marriage is not registered, any person satisfying the registration officer to have sufficient interest in that matter may submit an application to the registrar in a prescribed manner for an investigation into the existence of a marriage. (b) Where the registration officer is satisfied with the existence of a valid normal marriage or the existence between the spouses, he or she must register the marriage and issue a certificate of registration as considered in subsection (4). (6) Where the registration officer is not satisfied that the spouses have entered into a valid normal marriage, he or she must refuse to register the marriage. (7) The Court may, upon request submitted to that court and following an investigation initiated by that court, order - (a) the registration of any ordinary marriage; or (b) cancelling or correcting any registration of a normal marriage by the registration officer. (8) A certificate of registration of a normal marriage issued in accordance with this Section or any other law providing for the registration of ordinary marriages constitutes prima facie proof of the existence of a normal marriage and the details contained in the certificate. (9) Failure to e-know a normal marriage does not affect the validity of that marriage. Determining the age of a minor (1) The registration officer may, in relation to a person who is allegedly a minor, accept a birth certificate, identity document, sworn statement by the parents or relatives of the minor or other evidence deemed appropriate by the registration officer as evidence of the age of that person. (2) Where the age of a person who is allegedly a minor is uncertain or in dispute and the age of that person is relevant for the purposes of this Law, the reporting officer may, in a prescribed manner, bring the case to a misdemeanor court established within the meaning of the Law on the Misdemeanor Court, 1944, which constitutes evidence of the age of the person. Equal status and ability of spouses The wife in a normal marriage has, on the basis of equality with her husband and subject to the marital property system governing marriage, full status and ability, including the ability to acquire property and dispose of it, to enter into contracts and litigation, in addition to all rights and powers it may have under customary law. The ownership consequences of normal marriages and contractual capacity of spouses (1) The ownership consequences of a normal marriage that have occurred before the beginning of this Law are still governed by normal law. (2) A common marriage which has been concluded after the beginning of this Law in which the spouse is not a partner in any other normal marriage, marriage is in the community of property and from profit and loss between the spouses, unless such consequences are specifically excluded by the spouses in the prenuptial agreement governing the marital system of the property of their marriage. (3) Chapter III and Sections 18, 19, 20 and 24 of Chapter IV of the Matrimonial Property Act, 1984 (Law 88 of 1984), apply in relation to any ordinary marriage that is in the property community as considered in subsection (2). (4) (a) Spouses in a normal marriage who have concluded before the beginning of this Law may jointly apply to the court for leave to change the matrimonial property system applicable to their marriage or marriage, and the court may, if satisfied - (i) have strong grounds for the proposed change; (ii) all creditors of the spouses are given sufficient written notice of the proposed change for amounts exceeding R500 or the amount to be determined Minister of Justice with notice in The Gazette; and (iii) the proposed change shall not be prejudiced, order that the system of marital property applicable to such marriage or marriage will no longer apply and empower the parties to such marriages or marriages to enter into a written contract in that the future marital system of their marriage or marriage will be governed by the conditions set by the court. (b) In the case of a spouse who is a spouse in more than one normal marriage, all persons having sufficient interest in the matter, in particular the applicant's existing spouse or spouse, must be included in the proceedings. (5) Section 21 of the Matrimonial Property Act, 1984 (Law 88 of 1984) applies to a normal marriage concluded after the beginning of this Law in which the spouse has no more than one spouse. (6) A spouse in a normal marriage wishing to enter into a further normal marriage with another woman after the beginning of this Law must apply to the court for the approval of a written contract regulating the future system of the marital property of his marriages. (7) When considering an application within the meaning of Subsection 6 - (a) the court must - (i) in the case of a marriage which is in the property community or subject to the accounting system - (aa) abolish the marital system of property applicable to marriage; and (bb) the effect of the division of marital property; (ii) ensure a fair distribution of assets; and (iii) take into account all the relevant circumstances of the family groups affected if the application is granted; (b) the court may - (i) allow for further modifications to the terms of the contract; (ii) grant an order under any condition which may be considered only; (iii) reject the application if, in its view, the interests of either of the parties involved would not be sufficiently protected by the proposed contract. (8) All persons having sufficient interest in the matter, in particular the existing spouse or spouse of the applicant and his potential spouse, must be included in the proceedings initiated within the meaning of the subpart (6). (9) If a court grants an application considered in subsection (4) or (6), the registrar or clerk of the court, as may be the case, must provide each spouse with an order of the court which includes a certified copy of such contract and must cause such an order and a certified copy of such contract to be sent to any registrar of the works of the area in which the court is located. Dissolving ordinary marriages (1) The usual marriage court can be dissolved only by a decree on divorce on the basis of the irreversible breakdown of the marriage. (2) The Court may grant a decision on divorce on the basis of an irreversible marriage if it is satisfied that the marital relationship between the spouses has reached such a state of disintegration that there is no reasonable possibility of renewing the normal marital relationship between them. (3) The Law on Mediation on Certain Matters of Divorce, 1987, (24th Act 1987) and Section 6 of the Divorce Act, 1979 (4) The court giving a decree on the dissolution of a normal marriage - (a) has the powers considered in sections 7, 8, 9 and 10 (b) to take into account all relevant factors in the case of a spouse who is a spouse in more than one ordinary marriage, take into account all relevant factors, including any contract, agreement or order adopted within the meaning of Section 7 (c) may order that any person who has a sufficient interest in the court's opinion be involved in the proceedings; (d) may adopt an order in respect of custody or custody of any minor child of marriage; and (e) any provision or arrangement made in accordance with normal law may take into account, when adopting a maintenance payment order. (5) Nothing in this Section may be construed as a limitation of the role recognised by normal law, by any person, including any traditional leader, in mediation, in accordance with normal law, any dispute or case arising before the breakdown of a normal marriage by a court. Despite the rules of customary law, the age of the majority of any person is determined in accordance with the Law on the Age of majority, 1972 (Law 57 of 1972). Change of marriage system (1) A man and a woman between whom the usual marriage subsists are competent for intermarriage under the Marriage Act, 1961 (Article 25 1961), if none of them are spouses in a normal marriage to any other person. (2) Where a marriage is concluded as considered in subsection (1) marriage is in the community of property and profit and loss, unless such consequences are specifically excluded in the prenuptial agreement governing the marital property system of their marriage. (3) Chapter III and Sections 18, 19, 20 and 24 of Chapters IV of the Matrimonial Property Act, 1984 (Law 88 of 1984), apply in respect of any marriage in the property community as considered in subsection (2). (4) Despite subsection (1), no spouse has entered into a marriage law of 1961, during the life of such a marriage, competent to enter into any other marriage. (1) The Minister of Justice, in agreement with the Minister, may adopt regulations - (a) relating to - (i) requests to be registration officer with regard to the registration of a normal marriage; (ii) the manner in which the declarable officer must be satisfied with the existence or validity of a normal marriage; (iii) the manner in which any person, including any traditional leader, may participate in the proof of existence or registration of any ordinary marriage; (iv) the form and content of the certificates, notices, statements and statements necessary for the purposes of this Law; (v) custody, certification, implementation, correction, reproduction and disposal of all documents relating to the registration of common marriages or any document prescribed by the law; (vi) any matter that is necessary or permissible to be prescribed within the meaning of this Law; and (vii) any other issue necessary or expedient in order to ensure the effective registration of common marriages or the effective functioning of this Law; and (b) the prescribing of fees payable in respect of the registration of a normal marriage and the issuance of any certificate in relation to them. (2) Any regulation adopted by subsections (1) must, before publication in the Gazette, be submitted to Parliament. (3) Any regulation adopted by subsections (1) which may result in financial expenditure for the State or regulations adopted by subsections (1)(b) must be adopted in consultation with the Minister of Finance. (4) Any regulation adopted pursuant to Subsection (1) may warrant that any person who breaches or fails to comply with the provision of law is not guilty of a criminal offence and, by conviction, will be liable for a fine or imprisonment not exceeding one year. (1) Section 17 of the Law on Registers of Works, 1937, (Article 47 of 1937), this is amended by this amendment to paragraph (b) of the following paragraph - (b) where the marriage at issue is governed by the law in force in the Republic or by any part thereof, indicate whether the marriage is contracted in or outside the property community or is a system of marital property governed by normal law in terms of recognition of normal marriages laws, 1998; (2) Section 45bis of the Registers of Works Act 1937, this is amended - (a) by replacing paragraph (b) of subpart (1) of the following paragraph - (b) forms or formed assets in the common property, and the court issued an order, or issued an order and received approval, in accordance with Section 20 or 21, 1984 and (b) by replacing paragraph (b) of subsection (1A) of the following paragraph - (b) forms or formed assets in the common property the court issued the order, or issued the order and gave approval in accordance with section 20 or 21(1) of the Matrimonial Property Act, 1984 (Law 88 of 1984), or in accordance with Section 7 of the Law on the Recognition of Common Marriages, as the case may be, in the sense of which the property, lease or bond is awarded by both spouses in undivided shares. . The laws set out in the Schedule are repealed to the extent specified in the third column of the Schedule. This law is called the Recognition Act on Common Marriages, 1998. Schedule REPEAL OF LAWS (section 12) No. and year of law Short title Scope of repeal of Law 38 of the Black Administration Act 1927, 1927. 1978 (Transkei) Sections 3, 29, 37, 38 and 39 Law 16 of the 1985 KwaZulu Code of the Zulu Code, 1985 Sections 22 and 27(3) Proclamation R151 of the 1987 Natal Code of Zulu Law, Section 27.

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