

Recognition Of Customary Marriages

A customary marriage means a marriage concluded in terms of Customary Law, which entails the customs and usages traditionally observed among the indigenous African peoples of South Africa and which form part of the culture of those peoples. Such marriages are now recognized and validated in terms of the Recognition of Customary Marriages Act 120 of 1998 (hereafter referred to as the 'Act').

In terms of the Act, if a customary marriage is entered into before 15 November 2000 it is a valid customary marriage and regulated by Customary Law. If entered into after 15 November 2000, it is a valid marriage and is regulated in terms of the Act. A Customary Marriage is valid in terms of the Act when it complies with the following requirements:

- The prospective spouses must both be above the age of 18 years; and
- The prospective spouses must both consent to be married to each other under Customary Law; and
- The marriage must be negotiated and entered into or celebrated in accordance with Customary Law.

1. The number of spouses

- If either of the prospective spouses is a spouse in a civil marriage, a customary marriage cannot be entered into during the subsistence of the civil marriage.
- Although there is no restriction on the number of customary marriages that a husband may enter into, no further customary marriage may be entered into unless an order of the court regulating the future matrimonial property of his marriage has been obtained.

2. Registration of customary marriages

- The spouses of a customary marriage have a duty to ensure that their marriage is registered;
- Either spouse may apply to the registration officer in the prescribed form for the registration of his or her customary marriage and must furnish the registering officer with the prescribed information and any additional information which the registering officer may require in order to satisfy himself or herself as to the existence of the marriage;



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- A registering officer must, if satisfied that the spouses concluded a valid customary marriage, register the marriage by recording the identity of the spouses, the date of the marriage, any lobolo agreed to and any other particulars prescribed.
- The registering officer must issue to the spouses a certificate of registration, bearing the prescribed particulars.
- A customary marriage must be registered within three months of the marriage, however, non registration of the customary marriage does not invalidate the marriage.

3. In Community of Property

- A customary marriage entered into before the commencement of the Act continues to be governed by Customary Law.
- A customary marriage entered into after the commencement of the above Act in which a spouse is not a partner in any other existing customary marriage, is a marriage In Community of Property, unless such consequences are specifically excluded by the spouses in an Antenuptial Contract which regulates the Matrimonial Property system of their marriage.
- A wife in a customary marriage has, on the basis of equality with her husband and subject to the matrimonial property system governing the marriage, full status and capacity.

4. Out of Community of Property

- An Antenuptial Contract may be entered into by the prospective spouses prior to the conclusion of the marriage.
 - The Antenuptial Contract must be entered into before the lobola letter is sent out as this initiates proceedings which lead to the conclusion of a customary marriage and at the Department of Home Affairs the registration officer will use the date of the lobola letter as the date of marriage.
5. It is therefore prudent to note that persons married according to Customary Law are in most instances married In Community of Property.



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notaries
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