RECOGNITION OF CUSTOMARY MARRIAGES IN TERMS OF ACT 120 OF 1998

CUSTOMARY MARRIAGES BEFORE 15.11.2000		CUSTOMARY MARRIAGES AFTER 15.11.2000	
Monogamous customary marriages	**Polygamous Customary marriages**	**Monogamous customary marriages**	**Polygamous Customary marriages**
Requirements for recognition as marriage 1. Must be a valid marriage concluded in accordance with Customary Law **[s2(1)].** 2. Must have existed on 15.11.2000 **[s2(1)].** **Matrimonial Property System** In community of property ***(Gumede decision).*** **Requirements of proof of existence for purposes of succession** 1. Marriage certificate; or 2. Proof of registration of customary marriage from Home Affairs **[s4(8)]**; or 3. Court order confirming existence of marriage and authorizing registration of the customary marriage **[4(7)(a)];** or 4. Minutes of family meeting held by the Master confirming existence of customary marriage where same has not been registered (MBU17).	**Requirements for recognition as marriage** 1. Must be a valid marriage concluded in accordance with Customary Law **[s2(1)].** 2. Must have existed on 15.11.2000 **[s2(1)].** **Matrimonial Property System** Governed by Customary Law – deemed out of community of property [**s7(1)** & (*Gumede decision*]. **Requirements of proof of existence for purposes of succession** 1. Marriage certificate; or 2. Proof of registration of customary marriage from Home Affairs **[s4(8)]**; or 3. Court order confirming existence of marriage and authorizing registration of the customary marriage **[4(7)(a)]**; or 4. Minutes of family meeting held by the Master confirming existence of customary marriage where same has not been registered (MBU17)	**Requirements for recognition as marriage** 1. Prospective spouses must both: (a) be above the age of 18 years; (b) consent to be married to each other under Customary Law. 2. Marriage must be negotiated and entered into or celebrated in accordance with Customary Law **[s3(1)].** **Matrimonial Property System** In community of property by default unless parties have entered into an Antenuptual contract **[7(2)].** **Requirements of proof of existence for purposes of succession** 1. Marriage certificate; or 2. Proof of registration of customary marriage from Home Affairs **[s4(8)]**; or 3. Court order confirming existence of marriage and authorizing registration of the customary marriage **[4(7)(a)]**; or 4. Minutes of family meeting held by the Master confirming existence of customary marriage where same has not been registered (MBU17)	**Requirements for recognition as marriage** 1. Prospective spouses must both: (a) be above the age of 18 years; (b) consent to be married to each other under Customary Law. 2. Marriage must be negotiated and entered into or celebrated in accordance with Customary Law **[s3(1)].** 3. Consent by first spouse in subsisting customary marriage for husband to enter into a further customary marriage ***[Mayelane Constitutional Court decision].*** **Matrimonial Property System** 1. If s7(6) has been complied with (written contract approved by court regulating matrimonial property system of all husband's customary marriages) the systems determined in the contract will apply. 2. If s7(6) has not been complied with, first marriage retains it's existing matrimonial property system, but 2nd marriage will automatically be out of community of property. ***[Mayelane CC decision].***

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RELATIONSHIP BETWEEN CIVIL AND CUSTOMARY MARRIAGES AND THEIR IMPACT ON ESTATES

Subsequent civil marriage by the spouse of a subsisting customary union to a third person: Situation between 1929 and 1.12.1988 (Areas outside the Transkei)	**Subsequent civil marriage by the spouse of a subsisting customary union to a third person: Situation between 2.12.1988 and 15.11.2000 (Areas outside the Transkei)**	**Dual marriages in Transkei between the period 1978 and 15.11.2000**	**Relationship between civil and customary marriages after 15 November 2000 – all areas in South Africa.**
1. Only civil marriages were deemed valid marriages. 2. A civil marriage automatically superseded and extinguished subsisting customary unions entered into prior to the civil marriage. 3. Customary wife/wives known as discarded wife/wives. 4. Sec 22(7) of Black Administration Act, 38/1927 provided some measure of protection to discarded spouses and their children. 5. On death of husband, status of discarded customary wife/wives and children were revived and deemed equal to that of civil-law spouse and children. 6. Both customary wife and civil-law wife will be deemed spouses for purposes of intestate succession.	1. Marriage and Matrimonial Property Law Amendment Act 3 of 1988 applicable. 2. Partners in a customary union may marry one another by civil rites. 3. Partners in a customary union may not marry a third person by civil rites during the subsistence of the customary marriage. 4. Customary marriage must first be dissolved before a partner may enter into a valid civil marriage to another person. 5. Should a partner in a customary union purport to enter into a civil marriage without first dissolving the customary union, the civil marriage would be invalid [***Thembisile and Another v Thembisile and Another*** 2002 (2) SA 209 (T)].	1. Section 39 of the former Transkei Marriage Act 21/78 applicable. 2. A husband in a subsisting customary union could during the subsistence of such union validly contract a civil marriage with a third person, provided the civil marriage was out of community of property. 3. A husband in a subsisting civil marriage could validly enter into a customary union with a third person, provided the subsisting civil marriage was out of community of property. 4. The wives of both the civil marriage and the customary union enjoy equal status.	1. Sections 22(1)&(5) of the Black Administration Act and the Transkei Marriage Act 21/78 revoked. 2. A man and woman in a customary marriage may marry each other by civil law, but may not marry a third person in terms of civil law [Sec 10(1) of the Recognition of Customary Marriages Act]. 3. No spouse in a civil marriage may enter into any other marriage, albeit civil or customary, during the subsistence of the civil marriage [Sec 10(4) of the Recognition of Customary Marriages Act].

MM Meyer: September 2013