Attention all life partners: you have more rights than you think

In our previous article, under the heading **[“Court kicks surviving life partner out of her home”]**, we told the story of Maree Poole. Her partner of many years died without a will; the Western Cape High Court held that theirs had never been a permanent life partnership, and ordered her out of the house by 31 October 2026 (*Jansen van Rensburg NO v Poole and Others* (21515/2024) [2026] ZAWCHC 162). Three months later, the Pension Funds Adjudicator went the other way, awarding a life partner 45% of an R8,3 million death benefit that the deceased had nominated entirely to his sister.

This article continues that topic. The good news is that our law has changed a great deal in favour of life partners. The bad news is what it still costs to prove it.

What qualifying life partners can claim

A life partner who falls into the right category may:

- **Inherit on intestacy.** The words “or partner in a permanent life partnership in which the partners have undertaken reciprocal duties of support” were read into section 1(1) of the Intestate Succession Act 81 of 1987 (*Bwanya v Master of the High Court, Cape Town* [2021] ZACC 51; 2022 (3) SA 250 (CC)), with effect from 1 July 2023.
- **Claim maintenance** from the deceased estate if unable to maintain herself (Maintenance of Surviving Spouses Act 27 of 1990, section 2(1), read with the definitions in section 1 as amended by *Bwanya*).
- **Enjoy the section 4(q) estate duty deduction** (Estate Duty Act 45 of 1955, section 4(q), read with the definition of “spouse” in section 1, which includes “a same-sex or heterosexual union which the Commissioner is satisfied is intended to be permanent”), and the portable section 4A abatement.
- **Share in a pension fund death benefit** as a dependant (Pension Funds Act 24 of 1956, section 37C read with the definition of “spouse” in section 1).
- **Sue for loss of support** after a fatal accident (*Paixao v Road Accident*

Fund 2012 (6) SA 377 (SCA)).

- **Receive assets free of donations tax, with capital gains tax roll-over** (Income Tax Act 58 of 1962, section 56(1)(b) and paragraph 67 of the Eighth Schedule).
- **Register as a medical scheme dependant** (Medical Schemes Act 131 of 1998, section 1) and obtain a domestic violence protection order (Domestic Violence Act 116 of 1998, section 1).

The catch — and the cure

Every one of those rights depends on proving the category: a permanent partnership with reciprocal duties of support. That is a factual enquiry, decided years afterwards, on affidavits and under cross-examination, against relatives who would rather the survivor got nothing. Ms Poole spent four days in the witness box and lost her home.

A will removes the enquiry altogether.

Our advice: sign a joint will. Any two people may sign one will — it is not reserved for married couples. The same rule applies to spouses married in community of property, spouses married out of community of property, and life partners. Yours should state clearly:

- who inherits if partner A dies first;
- who inherits if partner B dies first; and
- who inherits if both partners die within 30 days of each other.

One warning. Section 2B of the Wills Act 7 of 1953 automatically disregards a bequest to a former spouse for three months after a divorce. It does not apply to life partners. If you separate, your former partner keeps inheriting until you sign a new will.

Free wills during Wills Week

We will draft wills free of charge during the Legal Practice Council's Wills Week, **14 to 18 September 2026**.

You can click [this link] and fill in the relevant form online so we can draw up a will for you. It will not take you longer than five minutes to complete the form.

After that, we will provide you with the draft document and set up a meeting to discuss it and arrange for signing.

The service is free of charge.

Volker Krüger