Do both spouses have to sign a contract for the sale of land where they entered into a customary marriage?

The Matrimonial Property Act, 88 of 1984 deals with this issue. Where the parties are married in community of property both spouses need to sign the contract for the sale of land, or if only one spouse signs the contract, the other spouse's written consent attested by two competent witnesses has to be obtained.

In terms of the Recognition of Customary Marriages Act, 120 of 1998 certain customary marriages are recognised by the Act. Except if a notarial marriage contract, which must be registered in a deeds office, had been concluded by the spouses, such customary marriage would be regarded as a marriage in community of property.

Where you therefore deal with a purchaser or a seller who entered into a customary marriage, it is always safer to let both spouses sign the contract of sale also if there is uncertainty as to whether the customary marriage would indeed be recognised by the Act. Failure to do so can otherwise lead to the invalidity of the contract of sale.

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