Is your customary marriage registered?

Marriages which are valid in terms of customary law and existing at the commencement of the Recognition of Customary Marriage Act 120 of 1998 are recognised as a marriage and are automatically in community of property. It often happens that couples fail to register their customary at home affairs, however failure to register the customary marriage does not make the marriage invalid, the marriage will still be concluded and recognised as valid.

Spouses however have a duty to register their customary marriage within a period of three months after the conclusion of the marriage according to the Customary Marriage Act 120 of 1998. To register customary marriages form BI-1699 must be completed and required fees payable must be paid. An acknowledgement of receipt, form BI-1700, will then be issued by the Department of Home Affairs. Customary marriages can be registered at any office of the Department of Home Affairs or through a designated traditional leader in areas where there is no Home Affairs offices.

Those who concluded their customary marriage before 15 November 2000, have twelve months to register from commencement of the Recognition of Customary Marriage Act 120 of 1998. In both cases, if the parties missed the deadline, it could be extended by such longer period as the Minister may from time to time prescribe by notice in the Government Gazette.

The following people are required when registering the customary marriage: the two spouses (with copies of their valid identity books and a lobola agreement, if available), at least one witness from the bride's family, at least one witness from the groom's family, and/or the representative of each of the families. If the prospective spouses are minors or one is a minor, the parents should be present when the request to register the marriage is made.

If a registering officer is not satisfied that a valid customary marriage was entered into by the spouses, he or she must refuse to register the marriage. In such situations, the affected parties may approach a court for either the cancellation or rectification of any registration of a customary marriage effected

by a registering officer.

If for any reason, a customary marriage is not registered, any person who satisfies a registering officer that he or she has a sufficient interest in the matter, may apply to the registering officer in the prescribed manner to enquire about the existence of the marriage. There are some courts that do not question the validity of the customary marriage but prefer it be registered.

At present, the definition of customary marriages in our Law, only includes African customary marriages. It does not cover customary marriages entered into by Hindus or Muslims.

Reneilwe Magodielo, Van Velden-Duffey Inc