

Short Notes on:

## **GENERAL REQUIREMENTS OF A VALID MARRIAGE**

### ***Introduction***

Generally, when one thinks of entering into a marriage, they envision the picture-perfect setting of the perfect wedding and happy gatherings of family and friends in celebration of the new union.

However, there are certain stress factors leading up to the magical event, which most people do not see and are not always prepared for.

For example, what are the factors that may effect the validity of the marriage?

### ***Overview***

In South Africa marriages are regulated by the Marriage Act 25 of 1961, the recognition of Customary Marriages Act 120 of 1998 and Civil Union Act 17 of 2006.

Civil marriages have always been recognized in South Africa with Civil Unions and Customary Marriages recently receiving recognition. The Department of Home Affairs is tasked with the registration of marriages and will from time to time provide updates on it website in respect of the requirements for registration.

### ***General Requirements For Entering Into A Marriage***

Requirements in respect of customary marriages vs civil marriages and civil unions may occasionally differ, however for the most part the following requirements must be met in order to enter into a valid marriage:

- Both parties must give consent to be married,
- The parties must be 18 (eighteen) years or older. If a person is younger than 18 (eighteen) they must obtain consent from their parents / guardian / Commissioner of Child Welfare : if refused the parties may apply to the High Court for consent- in certain instances they may also require permission from the Minister of Home Affairs,

- The marriage must be lawful and abide by applicable laws, in other words, it must abide by any of the aforementioned legislation,
- Must be concluded by a marriage officer in the presence of 2 (two) witnesses
- Must be registered with the Department of Home Affairs,
- If a foreign national is marrying a SA citizen a *Letter of No impediment* will be required,
- If one of the parties were previously divorced then a final decree of divorce will be required before entering into a new marriage,
- If one of the parties are widowed then the death certificate of that predeceased spouse will be required.

### ***Who Can Perform The Ceremony?***

Only an authorised marriage officer may perform a civil marriage or civil union ceremony. The Department of Home Affairs website has list of marriage officers which may assist in ensuring that your marriage officer is properly authorised.

With Customary marriages, there are certain alternative requirements. A customary marriage must be registered by a designated traditional healer.

### ***Where Can the Ceremony Be Performed?***

- At a church or another building used for religious purposes,
- At a public office or private home with open doors,
- Can be done in a hospital where there are serious injuries to one of the parties or in a similarly concerned facility.

### ***Conclusion***

To alleviate some of the stress associated with wedding planning it is important to get some of the legal formalities and requirements out of the way first. This will allow for the avoidance of unwanted legal implications in the long run.

The department of Home Affairs is a good start point in order to achieve this, however legislation and regulations can sometimes be complicated to comb through. For legal certainty on complicated requirements it may be necessary to seek legal guidance from a professional.

Contact an Attorney at SchoemanLaw Inc for your Family Law needs.

