



DYKES VAN HEERDEN GROUP OF COMPANIES
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OUT OF COMMUNITY OF PROPERTY MARRIAGES ENTERED INTO BEFORE 1988 UNDER THE BLACK ADMINISTRATION ACT NOW DECLARED TO BE MARRIAGES IN COMMUNITY OF PROPERTY

In the event of someone being married where the laws of South Africa apply, without an antenuptial contract, such person is automatically married in community of property. Only if an antenuptial contract is registered in the relevant Deed's Office would the marriage be one of out of community of property.

The above, however, does not apply to marriages between black people married prior to 1988. The Black Administration Act (*"the Act"*) provides for these marriages to automatically be out of community of property.

The distinction between in and out of community of property, in short, is that when married out of community of property spouses each have a separate estate, when parties are married in community of property, they have one shared and undivided estate. In respect of marriages in community of property each party would have a claim to half of the estate and creditors may attach assets within the joint estate, despite only one of the spouses incurring the debt. The same is, not applicable to a marriage out of community of property, as each spouse is solely responsible for their own debts.

Recently the position as governed by the Act was considered in the High Court of KwaZulu Natal and found to be inconsistent with the Constitution. Deputy Judge President Isaac Madondo based the judgment on the recognition of the equal worth and dignity of all black couples of a civil marriage being long overdue.

The judgment continued to declare all existing civil marriages, considered to be marriages out of community of property under the Act, to now be in community of property.

Persons who prefer for their marriages to remain out of community of property are now to apply to the High Court to sanction same.

The ruling and the effect thereof are still to be confirmed by the Constitutional Court.

This newsflash has been prepared for information purposes only and does not constitute legal advice, or a legal opinion, the practical application of the provisions of this newsflash will vary depending on the facts of each case.

COMPANIES WITHIN THE DYKES VAN HEERDEN GROUP

DYKES VAN HEERDEN INC

Tel : (011) 279-5000
Fax : (011) 955-4799
E-mail info@dvh.net.za
19 Ontdekkers Road
Roodepoort 1724, South Africa

Docex 24, Roodepoort
Web-site: <http://www.dvh.law.za>

DYKES VAN HEERDEN (CAPE) INC

Tel : 0861 110 210
Fax : (021) 910-4911
E-mail admin@dvh.law.za
Unit E4/2, Edward IV
120 – 122 Edward Street
Bellville 7530, South Africa
Docex 42, Tygerberg
Web-site: <http://www.dvh.law.za>

DYKES VAN HEERDEN (KZN) INC

Tel : (031) 903- 1851
Fax : (031) 903-1101
E-mail thomas@kzndvh.za.net
Nr. 18 Ridge Road
Amanzimtoti
Durban 4120, South Africa
Docex 7, Amanzimtoti
Web-site: <http://www.dvh.law.za>

DYKES VAN HEERDEN SLABBERT HOPKINS INC

Tel : 0861 110 210
Fax : (021) 910-4911
E-mail admin@dvh.law.za
Unit E4/2, Edward IV
120 – 122 Edward Street
Bellville 7530, South Africa
Docex 42, Tygerberg
Web-site: <http://www.dvh.law.za>