



COHABITATION RELATIONSHIP / LIFE PARTNERSHIP AND ITS CONSEQUENCES

Cohabitation Relationship is defined as a permanent relationship between two or more persons who live together without being married in terms of the Marriage Act, Civil Union Act or Recognition of the Customary Marriages Act.

Unfortunately, South African law do not currently regulate these relationship, nor afford the same protection as those who are married in terms of the Civil Union and Marriage Act. It is therefore regulated by Common Law (rules that are not codified in legislation), however there are some Legislative protection afforded.

The common law

The common law provides for a written agreement between the parties to regulate their relationship. If the parties do not have a written agreement, the relationship is unregulated and the only protection afforded will be legislative protection, which unfortunately do not protect opposite-sex life partnerships as much as same-sex life partnerships. Alternatively, to receive any patrimonial benefits, the party can try to establish a universal partnership, which is not as easy due to four requirements to comply with, namely (i) Legal contract; (ii) Both parties contributed towards the partnership; (iii) Both parties acted for the benefit of the partnership; (iv) Both parties had the purpose to make a profit for the partnership.

Legislative Protection

- i. The Maintenance Act

When one of the parties need Maintenance contribution, such party would need to show that the other party has a duty to maintain the other party and that the party needing the maintenance must prove that he/she has a right and a need to such maintenance.

ii. Intestate Succession Act

The intestate Succession Act previously only afforded protection to spouses. In *Gory v Kolver* the court however read in the words “same sex life partnerships” to include intestate protection.

There has been no other judgement changing the wording, consequently only same sex life partnership will have protection when one of the parties dies without a testament. The act according do not protect opposite sex cohabitation relationships.

iii. Maintenance of Surviving Spouse Act

The Act’s wording were also extended to same sex life partnership but in *Volks v Robinson* the court denied to extend the legislative protection to opposite sex partnerships.

iv. Action for Dependent

The action for a Dependent is a common law action for when a spouse to a valid marriage is injured or killed in a wrongful and culpable manner. The Supreme Court of Appeal in *Du Plessis v Road Accident Fund* held that this action shall extend to same sex life partnerships.

Fortunately, the court in *Paixão v Road Accident Fund* also decided that opposite sex life partnerships should also be able to claim maintenance by proving that they have a right to Maintenance, there was a legal obligation on the party and the relationship is marriage-like.

It is consequently the best option to protect oneself to sign a written cohabitation agreement that regulates the duties/obligations during the partnership and the consequences when the life partnership is terminated.

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