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THE PRESIDENCY

No. 319

1 June 2021

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 1 of 2021: Recognition of Customary Marriages Amendment Act, 2021

DIE PRESIDENSIE

No. 319

1 Junie 2021

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No. 1 van 2021: Wysigingswet op Erkenning van Gebruiklike Huwelike, 2021

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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(*English text signed by the President*)
(Assented to 26 May 2021)

ACT

To amend the Recognition of Customary Marriages Act, 1998, so as to further regulate the proprietary consequences of customary marriages entered into before the commencement of the said Act; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts, as follows:—

Amendment of section 1 of Act 120 of 1998, as amended by section 19 of Act 42 of 2001 and section 10 of Act 31 of 2008

1. Section 1 of the Recognition of Customary Marriages Act, 1998 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of “traditional leader” of the following definition: 5
“‘traditional leader’ means any person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position and is recognised in terms of the applicable legislation providing for such recognition.”. 10

Amendment of section 7 of Act 120 of 1998

2. Section 7 of the principal Act is hereby amended—
(a) by the substitution for subsection (1) of the following subsection:
“(1) (a) The proprietary consequences of a customary marriage in which a person is a spouse in more than one customary marriage, and which was entered into before the commencement of this Act, [continue to be governed by customary law] are that the spouses in such a marriage have joint and equal—
(i) ownership and other rights; and
(ii) rights of management and control, over marital property. 15
(b) The rights contemplated in paragraph (a) must be exercised—
(i) in respect of all house property, by the husband and wife of the house concerned, jointly and in the best interests of the family unit constituted by the house concerned; and
(ii) in respect of all family property, by the husband and all the wives, jointly and in the best interests of the whole family constituted by the various houses. 20
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ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk in vierkantige hakies dui op weglatings uit bestaande verordeninge.
- Woorde met 'n volstreep daaronder dui op invoegings in bestaande verordeninge
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(Engelse teks deur die President geteken)
(Goedgekeur op 26 Mei 2021)

WET

Tot wysiging van die Wet op Erkenning van Gebruiklike Huwelike, 1998, ten einde die vermoënsregtelike gevolge van gebruiklike huwelike wat voor die inwerkingtreding van die gemelde Wet gesluit is, verder te reël; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

PARLEMENT van die Republiek van Suid-Afrika verorden, soos volg:—

Wysiging van artikel 1 van Wet 120 van 1998, soos gewysig deur artikel 19 van Wet 42 van 2001 en artikel 10 van Wet 31 van 2008

1. Artikel 1 van die Wet op Erkenning van Gebruiklike Huwelike, 1998 (hierna die Hoofwet genoem), word hierby gewysig deur die omskrywing van "tradisionele leier" deur die volgende omskrywing te vervang: 5
"tradisionele leier" 'n persoon wat ingevolge gewoontereg [of enige ander wet 'n posisie in 'n tradisionele gesagshiërargie beklee] van die betrokke tradisionele gemeenskap, 'n tradisionele leierskapsposisie beklee en erken word ingevolge die toepaslike wetgewing wat vir sodanige erkenning voorsiening maak; en". 10

Wysiging van artikel 7 van Wet 120 van 1998

2. Artikel 7 van die Hoofwet word hierby gewysig—
(a) deur subartikel (1) deur die volgende subartikel te vervang: 15
"(1) (a) Die vermoënsregtelike gevolge van 'n gebruiklike huwelik waarin 'n persoon 'n gade in meer as een gebruiklike huwelik is, en wat voor die inwerkingtreding van hierdie Wet gesluit is, [bly onderhewig aan die gewoontereg] is dat die gades in so 'n huwelik gesamentlike en gelyke— 20
(i) eiendomsreg en ander regte het; en
(ii) regte van bestuur en beheer,
oor huwelikseiendom het.
(b) Die regte in paragraaf (a) beoog, moet uitgeoefen word— 25
(i) ten opsigte van alle huisgoed, deur die man en vrou van die betrokke huis, gesamentlik en in die beste belang van die gesinseenheid wat deur die betrokke huis daargestel word; en
(ii) ten opsigte van alle gesinsgoed, deur die man en al die vroue, gesamentlik en in die beste belang van die hele gesin wat deur die verskeie huise daargestel word. 30

- (c) Each spouse retains exclusive rights over his or her personal property.
- (d) For purposes of this subsection, ‘marital property’, ‘house property’, ‘family property’ and ‘personal property’ have the meaning ascribed to them in customary law.”; and
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) A customary marriage [entered into after the commencement of this Act] in which a spouse is not a partner in any other existing customary marriage, is a marriage in community of property and of profit and loss between the spouses, unless such consequences are specifically excluded by the spouses in an antenuptial contract which regulates the matrimonial property system of their marriage.”.

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Transitional provisions

3. (1) The provisions of section 2 of this Act do not invalidate—

- (a) the winding up of a deceased estate that was finalised; or
(b) the transfer of marital property that was effected,
before the commencement of this Act.

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(2) The provisions of subsection (1) do not apply to the transfer of marital property where, at the time of such transfer, the person to whom the marital property was to be transferred, was aware that the marital property in question was subject to a legal challenge.

Short title

4. This Act is called the Recognition of Customary Marriages Amendment Act, 2021.

(c) Elke gade behou eksklusieve regte oor sy of haar persoonlike goed.

(d) By die toepassing van hierdie subartikel, het die terme 'huweliksgoed', 'huisgoed', 'gesinsgoed' en 'persoonlike goed' die betekenis in die gewoontereg daaraan toegeskryf.'; en

(b) deur subartikel (2) deur die volgende subartikel te vervang:

"(2) 'n Gebruiklike huwelik [wat na die inwerkingtreding van hierdie Wet gesluit is en] waarin 'n gade nie 'n genoot in enige ander bestaande gebruiklike huwelik is nie, is 'n huwelik in gemeenskap van goed en van wins en verlies tussen die gades, tensy sodanige gevolge uitdruklik deur die gades in 'n huweliksvoorwaardeskontrak wat die huweliksgoederebedeling van hul huwelik reël, uitgesluit word.".

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Oorgangsbeplings

3. (1) Die beplings van artikel 2 van hierdie Wet maak nie—

- (a) die likwidasie van 'n bestorwe boedel wat afgehandel is; of
(b) die oordrag van huwelikseiendom wat geraak is,

voor die inwerkingtreding van hierdie Wet, ongeldig nie.

(2) Die beplings van subartikel (1) is nie van toepassing op die oordrag van huweliksgoed waar die persoon na wie die huweliksgoed oorgedra sou word, ten tyde van sodanige oordrag daarvan bewus was dat die betrokke huweliksgoed aan 'nregsuitdaging onderworpe was nie.

Kort titel

4. Hierdie Wet heet die Wysigingswet op Erkenning van Gebruiklike Huwelike, 2021.

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