

THE UNINTENDED CONSEQUENCES OF LIVING TOGETHER – WHY UNMARRIED COUPLES MUST ENSURE THEY HAVE A VALID WILL

In these interesting times we find ourselves in, it is not unusual for people to live together, have children, buy properties and run a business together without formalising their relationship, either through marriage or civil partnerships.

According to Elmien Pols of Private Client Trust, the fiduciary division of Private Client Holdings, many people incorrectly believe that such relationships automatically lead to the formation of common law spouses.

“I have been asked many times about how long the legal time frame is to qualify as a common law spouse – however, the reality is that this concept is not yet recognised in South African law.”

Elmien advises that the financial security and protection offered by marriage or civil partnerships does not apply to unformalized “life partnerships” and says that the mutual duty of support and division of assets as applied by marriage do not exist, in South Africa, unless formally contracted in some shape or form.

“Even though some protection is offered to domestic partnerships, for instance in the case of the Pension Funds Act which includes into the definition of spouse, “a person who is the permanent life partner”, when it comes to the duty of maintenance or when a partner in such a relationship dies without a valid Will, the consequences may be devastating,” warns Elmien.

“When a person dies without a valid Will, the Law of Intestate Succession will prescribe how the person’s assets will be left to their next-of-kin. In the normal scheme of things, a spouse and children will inherit. However, in terms of domestic partnerships, children will stand to inherit should a parent die without a valid Will, but the surviving partner will not qualify to inherit at all.”

Elmien explains how she was approached a number of years ago by the family of a man who was left destitute as a result of his life partner not having a valid Will.



“This gentleman had lived together with his life partner for many years and for reasons unknown, all assets, including their home, were in his partner’s name. On her passing, it was discovered that she had no Will and in terms of intestate succession, her closest relatives were her elderly sisters who inherited everything from her and left her partner in dire straits. It is very clear that this was not her intention and the outcome would have been entirely different had she nominated him as her sole beneficiary in terms of a valid Will.”

However, it seems that the laws have not been quite equal to all.

“In the case of same sex life partners, the Courts have found that they will inherit from each other, should one of them pass away without a valid Will,” says Elmien. “The reason for this is that in bygone years, same-sex marriages were not allowed, and it would have been impossible for homosexual couples to get married and as a result inherit in terms of Intestate Succession. This principal was not extended to heterosexual couples as they have always had the option of getting married and by choosing not to marry, they choose not to have the security which comes with marriage.”

Elmien says that it has been widely discussed and recognised that there is a need for a remedy to assist the partners of a common law relationship and for this purpose, the draft Domestic Partnership Bill was published in 2008. “If written into Law, the Bill will do much to bring equality and dignity to often economically vulnerable persons. Until such time however, it is critically important for life partners to know their rights and ensure that they have an up-to-date, valid Will in place.”

For more information please contact Elmien Pols at Private Client Trust on (021) 671 1220 or email trusts@privateclient.co.za

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About Private Client Trust

Private Client Trust is the fiduciary arm of Private Client Holdings which was founded as a corporate tax consultancy in Cape Town, South Africa in 1990. Since then the company has developed into a full spectrum Asset and Wealth Management Company and multi-Family Office with six specialist divisions; Wealth Management, Portfolio Management, Financial Services, Fiduciary Services, Cash Management and Risk Management.

Private Client Holdings (PCH) are taking the lead in Southern Africa when it comes to providing high net worth families with an all-inclusive wealth management solution and recently secured 2nd position overall in the TOP WEALTH MANAGER: BOUTIQUES in the INTELLIDEX TOP PRIVATE BANKS & WEALTH MANAGERS AWARDS 2019. They also placed 3rd in the Passive Lump-sum Investor award and 2nd in the Successful Entrepreneur award. The award they are most proud of is placing 2nd in the People's Choice Award - an award based purely on feedback from a confidential client survey.

Private Client Portfolios, the Portfolio Management arm of Private Client Holdings has been awarded the title of "Best Investment Advisory Team – South Africa 2019" in the Capital Finance International Award – this London based CFI.co awards programme identifies individuals and organisations worldwide that truly add value through best practice within their industry.



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