

PERSONALISED LEGAL ASSISTANCE

Professional legal and property consulting

SONNENBERG & ASSOCIATES PROPERTY AND LEGAL ADVICE NEWSLETTER #150

Greetings from a sunny Plettenberg Bay. Apologies for only sending out Newsletter #150 so late in the day!

1. Legal Quotes

"The best mother-in-law is the one that lives very far far away." [unknown]

"The more corrupt the State, the more laws." [Tacitus]

"Law is nothing else but the best reason of wise men applied for ages to the transactions and business of mankind." [Abraham Lincoln]

2. Legal short

One day a Madam opened the brothel door and saw a rather dignified, well-dressed, good looking man in his late forties or early fifties.

"Can I help you?" she asked.

"I want to see Valerie," the man replied.

"Sir, Valerie is our most expensive lady. Perhaps you'd like someone else?" said the Madam.

"No, I must have Valerie," the man said.

Just then Valerie appeared and announced to the man that she charged R50 000 a visit. Without hesitation the man pulled out R50 000 and gave it to Valerie and they went upstairs. After an hour, the man left.

The next night the man appeared again, once more demanding to see Valerie. Valerie explained that no one had ever come back two nights in a row – it was too expensive – and there were no discounts. The price was still R50 000. Again the man pulled out the money, gave it to Valerie and the two went upstairs. After an hour he left.

The following night the man was there again. Everyone was astounded that he had come for a third successive night, but he paid Valerie and they went upstairs.

After their session, Valerie questioned the man. "Nobody has ever been with me three nights in a row. Where are you from?" she asked.

"Welkom," said the man.

"Really," she said, "I have family in Welkom."

"I know," said the man. "Your father died, and I am your sister's attorney. She asked me to give you your R150 000 inheritance."

The moral of the story is that three things in life are guaranteed:

- 1. Death
- 2. Taxes
- 3. Being screwed by an attorney.

3. Inspiring quotes

"Live life to the fullest and focus on the positive." [Matt Cameron]

"People with the greatest advice usually have the most problems." [unknown]

"Excellence is not being the best; it's doing your best." [unknown]

4. Cohabitation

There is **no reciprocal duty of support between partners in a cohabitation relationship**- (*Steyn v Hasse and Another 2015 (4) SA 405 (WCC)*).

Cohabitation generally refers to people who, regardless of their gender, live together without being validly married to each other (the so-called "common law marriage"). Cohabitation is not recognised as a legal relationship in our law. Cohabitants do not have the same rights as partners in marriage or civil union, unless the aforementioned rights are regulated by agreement.

When a cohabitant dies without a valid will, their partner has **no right to inherit under the Interstate Succession Act. A cohabitant can also not rely on the provisions of the Maintenance of Surviving Spouses Act to secure maintenance on the death of a partner.** Furthermore, there is no obligation on cohabitants to maintain each other and they have no enforceable right to claim maintenance.

South African banks normally do not allow joint accounts for cohabitants. An account will usually be opened in one partner's name, but giving the other partner co-signing rights. Therefore, the partner in whose name the bank account is will be liable for any monies owed to the bank in case of an overdraft or loan.

Notwithstanding the above, our courts have given some measure of recognition to cohabitation and have in certain instances found that an express or implied universal partnership existed between cohabitants.

The courts have found that a universal partnership exists when parties acted like partners in all material respects without expressly entering into a partnership agreement. The three essentials of such a partnership were –

- **that each party contributed something to the partnership or bound himself or herself to do so;**
- **that the partnership would be carried on for their joint benefit; and**
- **the object should be to make profit.**

Life partners (regardless of their sex) are permitted to enter into a contract similar to an antenuptial contract that regulates their respective obligations during the subsistence of their union and the (patrimonial) consequences of the termination thereof. Such agreements are sometimes referred to as **cohabitation contracts or domestic partnership agreements.**

Such an agreement will usually contain regulations regarding finances during the existence of the cohabitation relationship and **deal with the division of property, goods and assets upon its termination.** Parties may even include an express provision for the payment of maintenance upon termination.

In the absence of a cohabitation agreement or a proven universal partnership, private property acquired by the cohabitants prior to their relationship belongs to the partner who originally acquired it and no community of property can be established. It therefore follows that a cohabitant who is not the owner of the property has no special right to occupy the common home. Cohabitation per se does not give rise to automatic property rights, but the ordinary rules of the law of contract, property and unjustified enrichment might be invoked by cohabitants to enforce their rights.

Similarly, property bought during the relationship will belong to the purchaser thereof, unless it can be proven otherwise.

When the property is in both partners' names, neither can evict the other from the property. One cohabitant may, however, approach the court to terminate the joint ownership and divide the property in cases where the cohabitants can't agree.

If cohabitants enter into a **joint lease**, they will be **jointly liable for the rent.** In cases where the lease agreement is signed by only one partner, the non-tenant partner has no legal rights and responsibilities, and is therefore not liable to pay rent. However, he/she also has no security of tenure and can be evicted by the tenant partner if the relationship fails.

There is no obstacle to making specific provision for a domestic partner in a will. A person is entitled to leave his/her estate to a partner even to the exclusion of his/her spouse.

I am available on 083 2515451 or fritz@sonnenberg.co.za.

C & A Friedlander (Claremont branch) handle all my transfers, which I personally oversee. Refer your transfers to me and have your transfer registered on time, every time. Sonnenberg Property Services (Pty) Ltd is a licensed estate agency. Check out our website:

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