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QUICKLAW GUIDE





Marriages

How can a person get married in Botswana?

A person can get married in terms of a civil marriage or customary marriage.

- > **Civil marriage** is when a man and a woman are married by a marriage officer. All magistrates are marriage officers. Most pastors, priests and other church leaders are also marriage officers. Any person with a marriage certificate has a civil marriage.
- > **Customary marriage** is when a man and a woman are married according to the traditions of their community, but without a marriage officer. The law on customary marriages is different in different communities. Customary marriages are not registered in the same manner civil marriages are.

What are the general requirements for a valid marriage?

- > Both persons to the marriage must give consent to get married and must be older than 18 years of age.
- > A person younger than 18 years of age, needs the permission of his/her parent/s or guardian/s to get married. No person younger than 18 years of age can enter into a civil marriage.

The marriage must be lawful, for example:

- persons who are closely related (such as brother or sister, or parent and child) may not get married; or
- a person may not have more than one marriage at a time, except for customary marriages.
- Persons must demonstrate that they have never been married before or their marriage has been dissolved either by death or by other lawful means. Individuals should be prepared to present divorce or death decrees, as necessary.
- > Certain formalities must be adhered to, such as that the marriage must be concluded by a marriage officer and in the presence of two witnesses.
- > A marriage must be registered.

What is a civil marriage?

- > It is a marriage that can only be entered into between a man and a woman and governed by Common law.
- > Civil marriages must be conducted by an authorized official of the law and registered at the District Commissioner.

What is a customary marriage?

- > It is a marriage entered into between a man and a woman, negotiated and celebrated according to the prevailing customary law in their community.
- > A marriage conducted customarily must have the approval of the local chief and be conducted at the "kgotla," which is the customary court.

What is a religious marriage?

- > It is a marriage entered into in terms of a religion such as the Islamic and Hindu faith.

Glossary of terms:

ACCRUAL SYSTEM: during the marriages contracted out of community of property, each spouse retains control of his or her own property, builds up his or her own estate and each is responsible for his or her own debts. On dissolution of the marriage by death or divorce, the value of the assets obtained during the marriage, or the accrual, will be shared equally. The accrual is determined by calculating the difference in the net starting value and the net final value of the estate of each spouse with the exclusion of inheritances, legacies and donations. On dissolution of the marriage the value of the difference in the accrual of the two estates, taking inflation into account, is then divided equally.

ANTE NUPTIAL CONTRACT: A contract entered into to regulate whether a marriage will be out of community of property with/without the accrual system. An ante nuptial contract must be signed by the persons entering into a marriage, two witnesses and a notary public, and it must be registered in the Deeds Registries office within the prescribed time period.

MARRIAGE IN COMMUNITY OF PROPERTY: There is one estate between a husband and a wife. Property and debts acquired prior to or during the marriage are shared equally in undivided shares (50%). Both spouses are jointly liable to creditors. This marital regime automatically comes into existence unless another regime is selected.

MARRIAGE OFFICER: A person who is authorized to conclude a marriage between two persons, such as ministers of a religion or a person who is appointed as a marriage officer by the Minister of Home Affairs.

How can LegalWise assist you?

Should you require an explanation of your rights on this topic, please contact your nearest Branch.