

YOU AND YOUR MARRIAGE: *Minors and marital power*

In this article, *Cathi Albertyn* explains some of the ways a married woman is seen by the law and what her rights are

All unmarried women over 21 are seen as independent adults. But, in some cases, when a woman marries, she is treated as a minor in the law, even if she is over 21.

A *minor* is the same as a child. A woman who is a minor needs her husband's permission to do certain things because her husband is seen as her guardian.

A woman who is subject to *marital power* needs her husband's permission to enter into an agreement or go to court.

Marital power also means that your husband can control your property. This includes property that you own together if you are married in community of property, and your own property if you are married out of community of property.

The law sees married women who are minors and married women who are subject to marital power as different. In practice, however, they are the same.

Who is a minor?

Women married by customary law are minors, except women married in Natal by customary law.

Who is subject to marital power?

All women who are married by customary law in Natal are subject to marital power. Some women who were married in civil law (by a marriage officer) are also subject to marital power. This includes coloured, Indian and white women married before 1 November 1984 and African women married before 2 December 1988. Women

who were married in a civil ceremony after these dates are seen as adults. If you have an antenuptial contract (a legal agreement drawn up before getting married), the contract will tell you whether marital power exists.

Can your husband sell your property without your permission if you are married in a civil marriage and you are subject to marital power?

YES. If you are married in community of property and your husband gets into debt, the money he owes can be claimed against your joint property. Or he can sell the property to pay for his debts. Property here includes all your belongings.

Is there any protection against your husband selling or giving away your property?

YES. But you must make sure that the title deeds (papers proving ownership) say the property is protected. To get your property protected, you must have your property endorsed at the deeds office.

If the title deeds are endorsed, your husband cannot take out a bond or sell your property without your permission. Property in this case means:

- land or a house that is in your name, if you are married out of community of property;
- land or a house that is part of the joint estate if you are married in community of property, provided that you owned the

Graphic: Zenda Woodman



property before you married, or you bought the property with your own money or you inherited it.

Also, your husband cannot interfere with:

- your wages or bank account;
- the tools of your business;
- life or education policies if you pay the premium.

If you are married in a *civil marriage*, are there any cases where you do not need your husband's help?

YES. You don't need your husband's help:

- to buy things for the household (like food);
- to take out education policies for your children or life policies for yourself or your husband;
- to run a bank account, as long as you don't get into overdraft;
- to accept a gift that does not cost you anything.
- to run your business if the business is your own.

You can also go to court about:

- any wages that you are owed;
- anything to do with your business;
- divorce, custody or maintenance;
- your insurance or education policies;
- claiming money for bodily injuries.

To do these things, it does not matter whether you were married in community of property or out of community of property.

If you are married in customary law, are there any cases when you don't need the help of your husband?

YES. If your husband has abandoned you and he cannot be found, you can control your own property, enter into agreements and go to court on your own.

If you live with your husband, you can rent or buy land in townships and get a bank loan to build or fix up your house without your husband's permission.

You can also claim maintenance. ☺

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