

When a couple are married *out* of community of property, the property which belonged to the deceased is given to the people named in the will. The other spouse keeps his or her own property.

If a person has not left a will, the rules on inheritance depend on race. You should contact the Master's Office (061 292 1111) for more information.

## Legal solutions for marriages in community of property

**If one partner acts without the consent of the other, what happens if money or property is lost?**

The partner who did not agree can:

- Ask the High Court to give them more than half of the joint estate when it is divided during a divorce or death to make up for what has been lost.
- Ask the High Court to order money to be paid while the marriage is still in force. This can be useful if the partner who acted without proper consent has separate property which is not part of the joint estate. This property can be used to make up what was lost from the joint estate.

**If one partner keeps acting without the consent of the other spouse, or is wasting property or money from the joint estate, what can the other partner do?**

The partner who is not agreeing to these actions can:

- Ask the High Court to stop the other partner from using the joint estate.
- Ask the High Court to order the other partner to stop using the joint estate to do certain things. For example if the partner is using joint money for gambling, the court could make an order aimed at preventing this.

**If one partner will not agree to a transaction, what can the other partner do?**

The High Court or Magistrate's Court can give permission for one partner to act without the permission of the other partner if the court finds that the partner is being unreasonable by not giving consent.

## Marriage and children

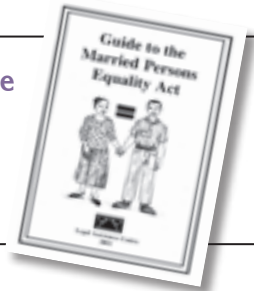
The MPEA says that both parents are joint custodians and equal guardians. This means both parents can make decisions about how their children are brought up.

They do not have to consult each other for most decisions. But some decisions, such as deciding to put the child up for adoption or moving to another country and taking the child, must be made together.



The MPEA says that a boy and girl need consent from both their parents to get married until they are over 21. If they are under the age of 18, they also need the consent of the state.

For more information see the Legal Assistance Centre's *Guide to the Married Persons Equality Act*.



This leaflet was prepared by **Dianne Hubbard, Rachel Coomer and Julie Holt.**

Design and layout was by **Perri Caplan** and the illustrations were by **Nicky Marais**

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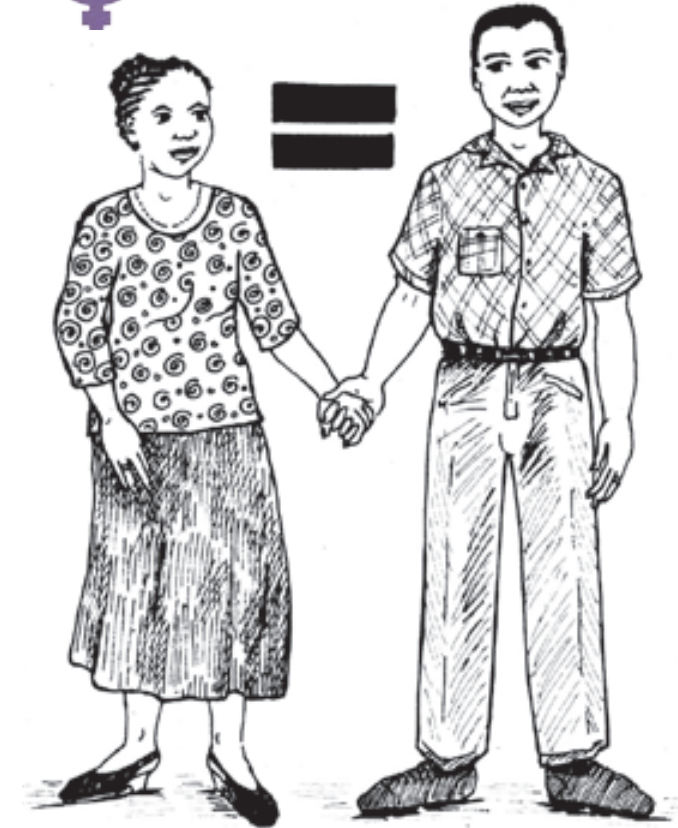
**LEGAL ASSISTANCE CENTRE**  
P.O. Box 604, Windhoek, Namibia • Tel. 061-223356



# Pocket THE MARRIED PERSONS GUIDE EQUALITY ACT



**Gender Research and Advocacy Project**  
**LEGAL ASSISTANCE CENTRE**  
Windhoek, Namibia, 2008



## What is the Married Persons Equality Act (MPEA)?

The MPEA is a law that removes sexual discrimination from civil marriages. The Namibian Constitution says that "Men and women ... shall be entitled to equal rights as to marriage, during marriage and at its dissolution" (Article 14). The MPEA explains how this should happen. Married equality means that in the eyes of the law, a man does not have the power to rule his wife just because he is a man.



## Does the MPEA apply to all marriages?

In Namibia there are two types of marriage: civil marriage and customary marriage. Most of the rules in the MPEA only apply to civil marriages.

A civil marriage is when the wedding occurs before a registered marriage officer – such as a pastor or priest, or a magistrate at the Magistrate’s Court. A marriage certificate is issued after a civil marriage, and the wedding is registered with the government.

A customary marriage follows the customs and traditions of a community. Currently customary marriages are not registered and there is no marriage certificate to prove that a marriage has taken place.

## Marital power

Marital power was the legal power a husband had over his wife and her property in a civil marriage. The husband controlled all of the property, whether it was property that the couple owned together or the separate property of the husband or the wife.

The MPEA got rid of marital power. Husbands and wives now have equal power. In the eyes of the law, the husband is not the automatic ‘head of the household.’ A husband can still be the leader and decision maker in daily life if that is what the couple want. But if they go to court because of a dispute, the court will not automatically decide in favour of the husband.

## Property and marriage

When you get married, there are two main ways that property can be divided:

- *in* community of property
- *out* of community of property

### In Community of Property

Everything a husband and wife had before they were married becomes part of the joint estate. Everything earned or bought once married also becomes part of the joint estate. Each partner owns half of the joint estate. If one partner has a debt, money from the joint estate can be used to pay this debt.



The MPEA says that people married *in* community of property must both agree to sell or give away property such as the house, furniture or livestock. The husband or wife cannot sell property without the consent of the other. They also must agree before taking out a large loan.

### Out of Community of Property

Everything a husband and wife had before they were married remains their own. Once they are married they keep their own earnings. They are each responsible for loans and debts they make. However, the cost of household needs should be shared because a husband and a wife have a duty to maintain each other.



## How are you married?

Most civil marriages in Namibia are *in* community of property. If you want to be married *out* of community of property you must make a contract before you are married and register it at the office of the Registrar of Deeds.

## Marriage north of the old “Police Zone”

The Native Administration Proclamation 15 of 1928, which is still in force, makes a different rule for all civil marriages north of the old “Police Zone”, in the areas then known as Owamboland, Kavango and Caprivi, which take place between “Africans” on or after 1 August 1950. These marriages are automatically *out* of community of property. If you want to be married *in* community of property you must make a contract with the marriage officer before the marriage takes place.

## How does the MPEA affect the rules on divorce?

- If you are married *in* community of property, everything is shared equally between partners.
- If you are married *out* of community of property, each partner keeps their own property.

## How does the MPEA affect the rules on inheritance?

When a couple is married *in* community of property, the joint estate is divided in half when one person dies. If the deceased left a will, the property in the deceased’s half of the estate is given to the people named in the will.