

# Legal tips for life partners

The definition of a spouse in the Income Tax Act caters for a person, who is a party to a 'same-sex or heterosexual union which the commissioner is satisfied is intended to be permanent' (hereinafter in this article referred to as a "life partner"). Here are a couple of legal and financial implications flowing from being in a relationship as a Life Partner:

1. No Donations Tax is payable for donations between spouses, which includes life partners.
2. No Estate Duty is payable in respect of the inheritance of a spouse, which includes a life partner.
3. No Estate Duty is payable in respect of the proceeds of life insurance paid to a spouse, which includes a life partner
4. The inheritance of a spouse, which includes a life partner, is exempted from Capital Gains Tax which would otherwise be triggered by death.
5. Life partners, as a general rule, do not inherit as intestate heirs in terms of the Intestate Succession Act like married couples do.
6. Life Partners, as a general rule, cannot claim maintenance from the deceased estate of their Life Partners like married couples can.
7. Life Partners, as a general rule, don't have any rights to share in the assets of a deceased like surviving spouses, married in community of property, or surviving spouses, married out of community of property with the accrual system, have. They would have to rely on a universal partnership for such purposes. A universal partnership is difficult to prove.
8. A fixed property, bequeathed to a Life Partner (or any other heir), can be transferred to the Life Partner free from any Transfer Duty.
9. A life partner can in the case of separation not claim a portion of the other Life Partner's pension interest like a married spouse can do in the case of a divorce.
10. Parents are liable for the maintenance of their children whether they are married, or not, and whether they are Life Partners, or not.
11. Life partners are, as a general rule, not obliged to maintain each other like married couples are.

As in the case of married couples, we advise Life Partners to have a joint will

drafted and signed.

We also advise Life Partners to sign a cohabitation agreement, which will, amongst others, in our opinion, help to convince SARS that the tax exemptions, catered for by the Income Tax Act and the Estate Duty Act, can, like married couples, be enjoyed by Life Partners.

Volker Krüger