

ASHLEY SLAMAT

— ATTORNEYS AT LAW —

Success. Understood.

THE CIVIL UNION ACT 17 OF 2006

The purpose of this Act is for solemnization of all civil unions by either a marriage or civil partnership, the legal consequences of civil unions and to provide for matters incidental thereto.

This Act is according to the following sections of the Constitution of the Republic of South Africa:

- 9(1) – The right to equality.
- 9(3) – The state may not unfairly discriminate directly or indirectly against anyone on the grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- 10 – The right to dignity and the respect and protection of dignity.
- 15(1) – The right to freedom of conscience, religion, thought, belief and opinion.
- The rights in the Bill of Rights may only be limited in terms of law and general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.
- The family law dispensation as it existed after the commencement of the Constitution did not provide for same-sex couples to enjoy the status and the benefits coupled with the responsibilities that marriage accords to opposite-sex couples.

Section 1: Definitions

“civil union” – the voluntary union of two persons who are both 18 years of age or older, which is solemnized and registered by way of either a marriage or a civil partnership, in accordance with the procedures prescribed in this Act, to the exclusion, while it lasts, of all others.

“civil union partner” – is a spouse in a marriage or a partner in a civil partnership, concluded in terms of this Act.

“marriage officer” – a marriage officer ex officio or so designated by virtue of section 2 of the marriage Act, or any minister of religion, or any person holding a responsible position in any religious denomination or organisation, designated as marriage officers under section 5 of this Act.

Section 4:

A marriage officer has all the powers, responsibilities and powers according to the Marriage Act to solemnize a civil union.

Section 5: Designation of Ministers of religion and other persons attached to religious denomination or organisation as marriage officers by the Minister –

- Any religious domination/organization may apply in writing,
- The Minister may designate such religious denomination as religious institution that may solemnize marriages under the Act and must publish particulars of such religious dominations in the *Gazette*.
- The Minister may revoke a request as above, and must also publish it in the *Gazette*.
- The Minister will authorize such a written request for any Minister of a religion or person holding a responsible position in a designated religious institution.

Section 6: Marriage officer not compelled to solemnize a civil union

- A marriage officer, other than a marriage officer referred to in Section 5, may inform the Minister in writing that he/she objects on the grounds of conscience, religion and belief to solemnizing a civil union between persons of the same sex, whereupon that marriage officer shall not be compelled to solemnize such a civil union.

Section 7: prohibition of solemnization of civil union without production of identity document or prescribed Affidavit.

- A marriage officer may only solemnize a marriage if both the parties produce their identity documents or
- Both the parties furnish him with the prescribed Affidavit or
- One party offer an identity document and the other the prescribed affidavit.

Section 8: Requirements for solemnization and registration of a civil union –

- A person may only be a party in one marriage or civil partnership at any given time,
- A person must furnish proof to the marriage officer of a certified copy of the divorce order or death certificate of the previous spouse/partner before he/she may be solemnized into a civil partnership.
- Two parties may only be solemnized into a civil union if, apart from the fact that they are of the same sex, not be prohibited by law from concluding a marriage under the Marriage Act or Customary Marriages Act.

Section 9: Objections to civil unions –

- A person who wants to raise an objection against a civil union must do so in writing with the marriage officer whom is going to solemnize the proposed civil partnership.
- The marriage officer may only solemnize the civil union if he/she is satisfied that there is no grounds in the objections

Section 10:

- A marriage officer may solemnize a civil union at any time during any day of the week, but is not compelled to solemnize it outside working hours (between 8 and 4).

- A civil union must be solemnized by the marriage officer in a public office, private dwelling-house or on the premises used for such purposes by the marriage officer, with open doors and in the presence of the parties themselves and at least two competent witnesses. Notwithstanding the above a civil union may be solemnized in any other place other than is mentioned above, if the reason for this is the serious or longstanding illness of, or serious bodily injury to, one or both of the parties.
- No person may enter into a civil union by way of another person acting as his representative.

Section 11: Formula for solemnization of a marriage or civil partnership

- This must be done according to the parties' wishes to have a marriage or civil partnership.
- The provisions of this section relating to the questions being put to each party separately or to the declaration whereby the marriage shall be declared to be solemnized, or the requirement that the parties must give each other the right hand, have not been strictly complied with owing to –
 - i. error, omission, or oversight committed in good faith by the marriage officer;
 - ii. an error, omission or oversight committed in good faith by the parties; or
 - iii. the physical disability of one or both of the parties

and such civil union has in every other respect been solemnized in accordance with the provisions of this Act, that the civil union shall, provided there was no other lawful impediment thereto, be valid and binding.

Section 12: Registration of a civil union

- The prospective civil union partners must individually and in writing declare their willingness to enter into a civil union with one another by signing the prescribed document in the presence of two witnesses.

- Then the marriage officer as well as the two witnesses must also sign the document to certify that the declaration was done in their presence.
- The marriage officer must furnish the parties with a certificate stating that they are entered into a marriage or civil partnership under this Act.
- The above certificate is *prima facie* proof of the validation of the civil union and the marriage officer must keep record of civil unions conducted by him/her.

Section 14: Offences under this Act –

- Any marriage officer who solemnizes a civil union which he/she is not authorised to solemnize or which is legally prohibited and a person who is not a marriage officer who purports to solemnize a civil union.
- Any marriage officer who demands or receives any fee, gift or reward for or by any reason of anything done by him or her as a marriage officer in terms of this Act.
- Any marriage officer who knowingly solemnize a civil union in contravention of the provisions of this Act.
- Any person who, for the purposes of this Act, makes any false representation or false statement knowing t to be false.