



CONTRACTUAL CAPACITY

THE CONTRACTUAL CAPACITY OF NATURAL PERSONS IN PROPERTY SALE AGREEMENTS

- Unmarried: Full capacity.
- Married in community of property: Limited capacity ito sec 15(2) of the Matrimonial Property Act 88 of 1984, written consent is required / both husband and wife are to be a party to the agreement.
- Married out of community of property: Full capacity.
- Married according to customary law: Full capacity if an ANC has been entered into and limited capacity if one was not entered into.

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- Married according to Muslim Rites: Limited capacity if marriage was solemnised by a registered Imam with no ANC entered into. Full capacity if ANC was entered into and marriage solemnised by an Imam. Also, full capacity if there is no ANC and the marriage was not solemnised by a registered Imam.
- Married according to Hindu Rites: Full capacity.
- Minors: Under seven years - No capacity, parents / legal guardian to sign on behalf of minor. Seven to eighteen years – Restricted capacity, requires parents / legal guardian's assistance. In both instances, and when alienating or mortgaging a property a consent from either the Master of the High Court or the High Court depending on the value of the property, will be required. Below R250K for master's consent and above R250K for High Court approval.

THE CONTRACTUAL CAPACITY OF JURISTIC PERSONS

COMPANY

Resolution by the directors of the company is required prior to signature of the contract of sale

CLOSE CORPORATION

A resolution by the members of the CC is required prior to signature of the contract of sale.

TRUST

A resolution by trustees is required prior to signature of the contract of sale.

REFERENCES:

The Matrimonial Property Act 88 of 1984

The Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998)

The Companies Act 71 of 2008 aims: to provide for the incorporation, registration, organisation, and management of companies

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PROPERTY PRACTITIONERS' REGULATORY AUTHORITY