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LIFE RIGHTS IN TERMS OF ACT 65 OF 1988

The Housing Development Schemes for Retired Persons Act 65 of 1988 (Act) regulates the alienation of certain interests in housing development schemes (schemes) for retired persons. A residential unit in the scheme may only be occupied by a retired person or their spouse in accordance with the Act. According to the Act, a retired person is someone who is 50 years of age or older, but a developer may impose a higher age requirement in the contract or in the rules. In exchange for paying a set amount, a person who purchases a life right in a retirement village acquires the right to live there for the rest of his or her life, and the developer retains the unit's ownership.

The right passes back to the developer upon the death of the occupant, who will resell the life right. The agreement between the developer and the occupant will stipulate the compensation amount that will be paid to the estate after the death of the life right holder. If both spouses signed a life right contract, no payment is made upon the passing of the first spouse. Simply said, life right goes on in favor of the survivor. An amount will only be payable to that spouse's estate upon the passing of the surviving spouse.

The question often arises if a surviving spouse can remain in the property after death of the holder of the life right. The two determining factors will be the marital status of the parties and the form of ownership.

If the spouses were joint owners, the surviving spouse stays on as he or she is legally a joint owner and entitled thereto. In other instances, the determining factor will be the wording and stipulations in the agreement. It will usually be the case that the spouse may stay on. It is advisable that the spouses bequeath their shares in a life right to each other.

Despite the fact that the purchase of a life right is still a contractual agreement, the Act imposes strict responsibilities on the developer such as, prohibiting the developer to alienate the life right, the owner of a life right also becomes entitled to the same rights as a lessee of a lease that is recorded against the property's title deed and lastly, a developer is not entitled to receive any consideration under a contract until an architect or quantity surveyor has issued a certificate stating that the scheme concerned has been erected substantially in accordance with approved building plans and town-planning scheme and is sufficiently completed for the purposes of utilizing the life rights and an attorney has certified that the title to the property has been transferred.