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WHY IT IS IMPORTANT TO KNOW THE MARITAL STATUS OF YOUR SELLER

As a rule of thumb, a spouse who is married in community of property needs the written consent of the other to sell the property. Without that written consent the sale agreement is not valid and binding, and the transaction is at risk of being unenforceable.

In the case of *Vukeya v Ntshane and Others* a husband married in community of property sold and transferred a house to a buyer in 2009. At the time, his wife was not living in the house and had moved to another part of the country. When the seller passed away in 2013 his wife was appointed executrix of his deceased estate. Four years later she successfully applied to the High Court for cancellation of the deed of transfer on the basis that the sale had been without her knowledge or consent.

The buyer appealed to the Supreme Court of Appeal on the basis that the wife's consent to the sale should be "deemed" to have been given. The buyer said that he acted in good faith as he had not known that the seller was married in community of property as he stayed alone on the property and signed both the title deed and the transfer documents as unmarried. Finding that the buyer had indeed proved that he did not know that the deceased was married and that he could not reasonably have known this, the Court allowed the appeal and the transfer to the buyer stands on the basis of deemed consent by the spouse.

In conclusion you should always make reasonable enquiries as to the seller's marital status and as to whether the other spouse's written consent to the sale is indeed needed.

During the transfer process we, as the transferring attorney, will also require the parties to sign affidavits to confirm marital status.