

Basic Divorce Guide

Written by Adv. Muhammad Abduroaf (*LL.B LL.M*)
(Advocate of the High Court of South Africa)

1. Legal Advice

- 1.1. If you want to get divorced from your spouse, I strongly advise that you approach a legal practitioner, or an attorney to attend to it on your behalf. This I would implore even more under the following circumstance:
 - 1.1.1. There will be a dispute over care and visitation rights over the child / children;
 - 1.1.2. One of the parties shall be applying for forfeiture of patrimonial benefits from a marriage in community of property;
 - 1.1.3. The joint estate is huge or complicated; or
 - 1.1.4. The other party shall be making use of legal representation.
- 1.2. If, however, you would like to know the general procedures on how to go about in obtaining a divorce decree; they are listed summarily below. There are many rules that regulate divorce processes and the summary below does exclude some of them. These include exceptions, strikeouts, compelling compliance, service addresses etc. Other matters incidental to divorce proceedings, e.g. interim arrangements, pending the divorce regarding maintenance for you or your children and care and contact regarding children are not dealt with. Therefore, please consult a legal practitioner or the divorce court throughout your divorce process should you decide to do the divorce yourself.

2. Summons and Particulars of Claim

- 2.1. A summons needs to be drafted which should be issued by the divorce court to commence the divorce process. It should have on it the details of the court you will be issuing divorce from, details of the parties, e.g. names, occupation and address etc. Every High Court in the area where you live have the authority to attend to a divorce.
- 2.2. You should then draft a particulars of claim outlining relevant matters concerning the marriage, children, reasons for wanting a divorce and what do you want the court to grant you in a divorce order. This particular of claim you attach to the summons.
- 2.3. Once you have your summons and particulars of claim in order, you have to have the summons issued.
- 2.4. To do this, make three (3) copies of your set of documents (Summons and Particulars of Claim) and have it issued at court.

3. Issuing and Service of Summons

- 3.1. Once you are at the court, go to the clerk / registrar of the court and have your documents issued.
- 3.2. The clerk / registrar will sign the summons and provide a case number and write it on the summons.

3.3. You should then take the original and a copy (both must be signed and stamped by the clerk / registrar of the court) and take it to the sheriff which serves documents where your spouse works or lives. You can ask the clerk / registrar of the court for that details.

3.4. The extra—copy of the summons and particulars of claim you keep for your file and records.

4. Notice of intention to defend

4.1. Once the sheriff has served the documents, your spouse has two weeks to inform you whether he or she shall be defending the divorce. This information is outlined in the summons.

4.2. If your spouse decided not to defend the divorce action, then after a period of two weeks has elapsed, you may set the matter down as an undefended divorce. If your spouse intends to defend the divorce, he or she would then have to do the following.

5. Plea to particulars of claim

5.1. Once you received notice of your spouse's intention to defend the divorce, about a month later, your spouse or his or her attorney should serve and file a plea.

5.2. The plea should outline which parts of your particulars of claim your spouse agrees (or disagrees) with which would give a direction of what to prove at court.

6. Counter Claim

6.1. Your spouse might want to file a counter claim. In the same way which you outlined your case as to what you want from the court and the reasons therefore in your particulars of claim, your spouse can file on you as well a counter claim.

6.2. A counter claim might still be filed if your spouse agrees to a divorce, but maybe wants primary care of the children, but in your particulars of claim, you asked for primary care.

6.3. You should then within 10 (ten) days plead to the counter claim in the same manner in which you pleaded to your particulars of claim.

7. Obtaining a Trial date

7.1. Once you received the plea, without a counter claim, or have pleaded to your spouse's counter claim, you should then approach the clerk / registrar of the court for a trial date. This you or your spouse may do.

8. Discovery

8.1. While you are waiting for a trial date, and way before the trial, you may ask, or may be asked to provide under oath a schedule of books and documents in your possession and under your control relating to the divorce. This could be policy documents, deeds etc, and which you or your spouse might want to make use of at trial.

8.2. Once you received this schedule you may inspect and request copies of the documents.

9. Divorce day / Trial

9.1. If your spouse does not defend the divorce within the time period, go back to court and ask for an unopposed divorce date and attend to your divorce on that date.

9.2. If however your divorce is defended, a trial should ensue. During the trial, each party shall prove his or her case. Witnesses shall be called and at the end, the Magistrate or Judge shall deliver the verdict.

Best of luck, and please, don't take my word, contact a legal practitioner should you decide to get divorced.

Kind regards,

Advocate Muhammad Abduroaf (Cape Town | Western Cape)

LL.B & LL.M (Master of Laws) Constitutional Litigation

Advocate of the High Court of South Africa

Supplied by:

Our Lawyer (Pty) Ltd

Office: 021 424 3487

Email: enquiries@ourlawyer.co.za

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