

Divorces in South Africa

A simple guide to understanding how the legal system on divorces work

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How does one get divorced in South Africa? Adv. Muhammad Abduroaf unpacks the legal process in a simplified manner.

1. Legal Advice on getting divorced

- 1.1. If you want to get divorced from your spouse, I strongly advise that you approach a legal practitioner to attend to it on your behalf. This I would implore even more under the following circumstances:
 - 1.1.1. There will be a dispute over care and visitation rights over the child/children;
 - 1.1.2. One of the parties will 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 will be making use of legal representation.
- 1.2. However, if you would like to know the general procedures on how to obtain a divorce decree, they are listed summarily below. Many rules regulate divorce processes, and the summary below does exclude some of them. These include specific notices, 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 the divorce from, details of the parties, e.g. names, occupation and address etc. Every High Court in the area where you live has the authority to attend to a divorce. You may also approach the Magistrate's Court. **Each court has its own rules and procedures.**
- 2.2. You should then draft a document called "particulars of claim" outlining relevant matters concerning the marriage, children, reasons for wanting a divorce, and what you want the court to grant you in a divorce order. The particulars 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. Other documents may have to be attached as well.

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 and stamp 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) to the sheriff who serves documents where your spouse works or lives. You can ask the clerk/registrar of the court for those 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 will be defending the divorce. This information is outlined in the summons.
- 4.2. If your spouse decides not to defend the divorce action, then after two weeks have 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 what is outlined next.

5. Plea to particulars of claim

- 5.1. Once you receive notice of your spouse's intention to defend the divorce, about a month later, your spouse or his or her legal practitioner 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 everyone an indication of what to prove in court.

6. Counter Claim

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

7. Discovery

- 7.1. 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., which you or your spouse might want to make use of at trial.
- 7.2. Once you receive these schedules, you may inspect and request copies of the documents.

8. Obtaining a trial date for the divorce

- 8.1. 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.

8.2. Please note that certain courts may have other procedures that need to first be adhered to before obtaining a trial date. For example, pre-trial conferences before a judicial officer etc.

9. Divorce day / Trial date

9.1. If your spouse does not defend the divorce within the period mentioned above, 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 will prove his or her case. Witnesses will be called, and at the end, the Magistrate or Judge will deliver the judgement.

Best of luck. Contact us or a legal practitioner should you decide to get divorced.

Kind regards,

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