



**NELSON
BORMAN**

VENNOTE ING PARTNERS INC

Divorce **Frequently asked questions**

Do I have to go to the High court to get a divorce?

The simple answer is “no” since the commencement of the Jurisdiction of Regionals Courts Amendment Act of 2008 Regional Courts also have civil jurisdiction eating that they can also ear divorce matters.

Therefore a divorce can be held in the Regional court in the region where one or both of the parties reside.

I have minor children, what now?

If there are minor child/ren born from the marriage the Family Advocate will need to be consulted.

In some situations it is impossible for the parties to agree on the care and maintenance of the children. In these situations the family advocate will have to hold several inspections in order to establish what is in the best interest of the child and this process may take anywhere from 6 months to a year to finalize.

Alternatively the parties may come to an agreement regarding the care, contact and guardianship of the minor child/ren as well as maintenance. This agreement may be sent to the Family Advocate for his approval/endorsement thereof and this process does not usually take very long.

How long does a divorce take?

Various factors will determine how long it would take to finalize the divorce. These include:

- . The location of the parties;
- . Whether the matter will be opposed or unopposed;
- . Whether there are children involved;
- . Whether maintenance will be claimed.

The length of a divorce varies according to the answers to the questions above for example if there is a settlement agreement or the possibility of settling the matter and the parties are both located in the same area the divorce could be finalized within 2 – 3 months, however if the parties decide to oppose the divorce it could take from 1 – 8 years

What documents would an attorney need to begin a divorce?

- . The following documents are required to proceed with a divorce, where applicable:
- . Original Marriage certificate;
- . Ante-nuptial contract, if applicable;
- . Identity numbers of the parties;
- . Birth certificates of the minor children (if available)
- . Full description of any immovable property owned by either party;
- . Full details of parties assets and liabilities;
- . Residential address of both parties;
- . Employment address of both parties (where available);
- . Full name and surname of both parties (where identity documents are not available);
- . Contact details of the parties (where available).

How will our assets be divided?

The matrimonial property regime applicable to the marriage will determine how the assets will be distributed on divorce.

If married in community of property, i.e no antenuptial contract was signed, the joint estate will be divided equally between the parties.

If married out of community of property excluding the accrual system, no division will take place. Each party will leave the marriage with the assets and liabilities currently registered in their names.

If married out of community of property including the accrual system, the parties will share growth in their respective estates accrued during the marriage.

Alternatively parties can settle the divorce on any other terms that they wish and they do not need to follow their matrimonial regime.

What are the grounds for divorce?

There are only two grounds for divorce namely:

- . Irretrievable breakdown of the marriage;
- . Mental illness or continued unconsciousness of one of the partners.

Irretrievable breakdown means that the parties are no longer able to live together in a normal marriage relationship. The court looks at two requirements here:

- . The marriage relationship must no longer be normal;
- . There must be no hope of the restoration of a normal marriage relationship.

The court will look at numerous factors to confirm that the relationship has broken down including:

- . The parties are no longer living together;
- . The parties no longer love each other;

- . The parties do not have any common goals or interests;
- . The relationship has turned abusive;
- . There are allegations of adultery; ETC.

What is mediation and will it work for us?

Mediation is a process whereby the parties get together to try and resolve the matter amicably with the help of a mediator. The mediator is an objective party who assist the parties to the divorce in coming to a settlement agreement. The mediator is not there to make the decisions for the parties.

Mediation will work where the parties are still able to communicate with each other and wish to settle the matter amicably without fighting. Mediation results in a faster and more cost effective divorce as the parties will not be fighting over all the aspects of the divorce.

Can I get divorced in South Africa if I got married overseas?

Yes, a divorce court can grant a divorce to any person whose is resident in the area of the court on the date of filing for a divorce, or where such person has been ordinarily resident in the area for more than a year immediately prior to filing for a divorce.

It must be kept in mind that the matrimonial regime follows the Husbands domicile at the date of marriage.

What if my spouse has left the house and can't be found?

In order to commence divorce proceedings a summons needs to be issued and this must be served on the opposing party. However, in some cases the opposing party cannot be located for example where one spouse has left the home and has not been

heard from in years.

In this scenario we use a process called Substituted service. Usually an application for substituted service is made before the divorce summons is issued. The party wanting the divorce must show that every possible attempt has been made to find the missing spouse and the party must set out the steps that have been taken to try and find the missing party.

You will set out to the court that you cannot serve the summons personally as required and that, in light of the facts set out, you are therefore entitled substituted service. The court may then order any manner of service it deems appropriate which may include publication in a newspaper, service on family members or friends, by fax or email.

Therefore it is still possible to get a divorce if one cannot find their spouse.

What is the cost of a divorce?

The cost of a divorce will differ depending on the whether the matter is opposed or unopposed. The extent of the estate and the fact that there are minor children involved will also have an influence on the cost of the divorce as more work may be required. It is best to consult with your attorney to get an indication of costs.



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