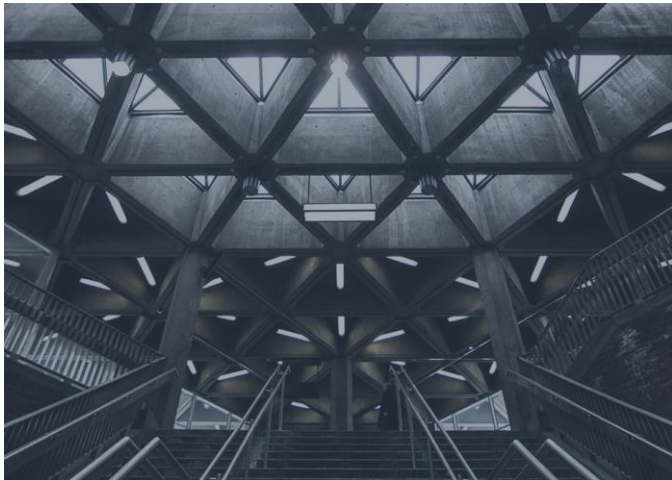


YOUR DIVORCE QUESTIONS ANSWERED

What is mediation?

Mediation is a process where a neutral and skilled mediator can assist families who are in conflict to work out arrangements for themselves and their children. Mediation is a voluntary process that can help two sides to reach an acceptable solution to their differences. A mediator can help the parties to examine ideas and options in a neutral, safe environment where they are both free to express their opinions. Lawson Legal treats the mediation as confidential and does not provide information to any third party, except where the parties expressly agree to this (such as sending summaries to your respective attorneys, if they have not taken part in the mediation).



**“Every courtroom
needs a case but
not every case
needs a
courtroom.”**

My partner and I are considering divorce. What is the first thing we should do?

Try marriage counseling if you believe a counsellor's intervention may help save your marriage. Sometimes all that is necessary is for a counsellor to intervene and put everything into perspective for the couple. If divorce is unavoidable, you should consider mediation.

The legal grounds for divorce

In South Africa, there are only two grounds for divorce:

- irretrievable breakdown of marriage; and
- mental illness or continued unconsciousness of one of the spouses.

SA divorce law is not based on fault so it doesn't matter whose fault it is that the marriage is over.

You need to satisfy the court that the marriage has in fact broken down irretrievably. Here are some examples:

- a spouse moving out of the house;
- abuse of any kind by one spouse towards the other spouse or the children;
- adultery ;
- habitual criminality;
- a failure to support or provide a home for your family;
- refusal of marital privileges;
- a spouse's alcohol or drug addiction;
- constant arguing, sulking or nagging;
- a spouse's obsession with a religious sect or political group;
- loss of love between the spouses.

What will happen to the children?

Both parties need to agree about where the children will live and how often the other parent will see them. If they cannot agree, the court as upper guardian of all minors will decide, usually on recommendation by the office of the family advocate.

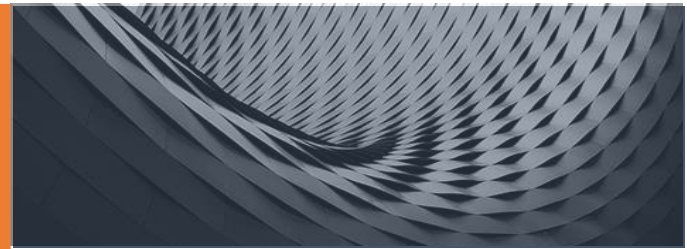
How will our property be divided?

If you cannot agree on how the property should be divided, the property will be divided in the default manner depending on whether you were married in or out of community of property and with or without the accrual system.

How do I get a divorce?

Only a High Court or one of 62 Civil Regional Courts can order a divorce.

You can conduct your own divorce proceedings, but we advise you to work with a Lawson Legal mediator, especially to resolve issues such as dividing the property, maintenance, care and contact of the children.



What is the difference between a contested and an uncontested divorce?

In a contested divorce the parties will dispute one or more of these issues:

- the grounds of divorce alleged by the party initiating divorce proceedings, for example, that the marriage has not broken down irretrievably;
- who the primary care giver of the children should be;
- the division of matrimonial property.

Contested divorces can take more than one day in court and, if in the High Court, the legal fees can be very high.

In an uncontested divorce the parties agree on all material aspects and sign a settlement agreement which then becomes part of the divorce order made by the court. No further evidence is needed to finalise the case.

The legal costs of uncontested divorces are much lower than in contested divorces and no legal representation is needed. A Lawson Legal mediator can assist the parties to reach settlement and the parties need not have legal representation.

Do I have to pay child maintenance?

Every parent has a legal obligation to maintain their child until the child turns 18 or becomes self-supporting. The amount of maintenance payable is calculated by first determining the actual costs of raising a child. These expenses include rental, food, toiletries, medical, education, clothes, electricity, transport and other expenses. The total cost of raising each child is then shared by both parents in proportion to their respective incomes.

For example:

Cost of raising child: R2 000 per month
Mother's income: R9 800 per month
Father's income: R16 000 per month

The mother is obliged to contribute 38% (her income divided by the total income) and the father's contribution would be 62% (his income divided by the total income).

Therefore, the mother pays R760 per month and the father pays R1 240 per month towards the cost of raising the child in this scenario.

Do I have to maintain my spouse?

One spouse may have a duty to maintain the other spouse. However, this is usually only if the other spouse was the breadwinner during the marriage and the claiming spouse was used to a certain standard of living which should be maintained after the divorce. The court will consider factors such as the age of the parties, their employment status, their qualifications, and the duration of the marriage.

In general, the Courts award little or no maintenance to an ex-spouse where one or more of the following factors are present:

- the person is young or reasonably young;
- they are well qualified;
- there are no children;
- they worked throughout their life and/ or are working at the time of the maintenance application;
- they are in good health;
- the marriage had not lasted long.

The court may grant rehabilitative maintenance for a limited period to one party after the divorce, taking into consideration the specific circumstances of the couple.



Do both parents have parental rights and responsibilities in respect of minor children involved in a divorce?

Yes. In terms of the Children's Act 38 of 2005 these parental rights and responsibilities include the responsibility and right:

- to care for the child;
- to maintain contact with the child;
- to act as guardian of the child, and
- to contribute to the maintenance of the child.

Agreements concerning the care of children and contact arrangements should be incorporated into a written agreement. The following considerations must be taken into account:

- will the care be granted jointly to both parents, or to one parent only?
- if sole care is granted, which parent will it be granted to?

MEDIATION IS RIGHT FOR YOU IF:

1. Children are involved and you need to act swiftly in the best interests of the children
2. You wish to save money
3. You are not prepared to go through a long and costly court process

Mediation is not the only alternative to a formal court experience, but it is one to consider seriously.

General Disclaimer: The information in this document is for general information purposes only and does not constitute legal advice. Each person's situation is different and you should get specific advice for particular needs.



- if joint care is granted, which parent will the children live with?
- the contact arrangements granted to the parent with whom the children are not living.
- the amount of maintenance payable for the children, and the contribution by each spouse.

A court will only grant a divorce if it is satisfied that the children's best interests have been provided for.

Although the parties may agree on how the care and contact of the children will be dealt with, the court ultimately has the sole discretion and will ensure that the children's best interests are always taken into account.

For more information, please contact us on 061 672 3670 or email us at advjadelawson@outlook.com

Alternatively, please visit our website on www.lawsonlegal.co.za