



Contested or Opposed divorce

It is accepted that separation is a time of significant emotional upheaval for every member of a family. During separation and the divorce process feelings of loss and guilt mingle with those of anger and revenge. You may experience extreme emotional and physical distress during the divorce process, which can manifest itself as insomnia, depression, weight loss and panic attacks. Much of this stress can be attributed to factors such as the need to reorganise daily tasks and parental responsibilities, the loss of significant relationships and possessions, and the need to establish a new identity as an individual. Likewise, divorce has a huge impact on the children of separating or divorcing parties, as they might have to change living conditions or schools and endure the acrimony of the separation or divorce, often being torn apart, both emotionally and psychologically, in an acrimonious war between their parents.

Legal procedure

Both the High Court and the Regional Magistrate's Court deal with divorce litigation and both have similar procedures which need to be followed prior to a matter going to trial. Divorce proceedings are commenced when one of the parties serves a summons on the other party, setting out their claim, which can include, over and above a decree of divorce, things such as spousal maintenance, child maintenance, care of and contact with minor children, division of assets, etc. The party commencing proceedings is referred to as the plaintiff and the other party, the defendant. After service of the summons on the defendant, the following procedures are followed:

- a) The defendant must file a notice of intention to defend within ten days;
- b) The defendant must file his/her plea and counterclaim, if any, 20 days thereafter;
- c) The plaintiff must file his/her plea to the counterclaim within 15 days.

At this stage the pleadings are considered closed and the parties can begin the process of preparing for trial. This process can become extremely frustrating in circumstances where one of the parties refuses to cooperate, in which case there are remedies available to the other party, in the form of applications to the court. Both parties are required by the rules to make discovery (i.e. make available to the other side) all documents and tape recordings which are/were in his/her possession or control and which relate to any issue in question. Such documents would include schedules of assets and liabilities, bank statements, proof of the values of pension funds, investments and shares, etc. Depending on the complexity of your

matter, the attitude adopted by your spouse, whether or not there are children involved, the issues in dispute and the like, this process can take anywhere from a few months, to several years.

How can we help?

Whilst we do our utmost, throughout proceedings, to make attempts to settle divorces through negotiation and mediation, where this is not possible, we will deal with the court processes and procedures on your behalf. We take care of the day to day management of your case and ensure that things are done according to the proper rules and that all your rights are protected, thereby taking the burden of litigation off your shoulders in order that you can focus on your emotional and psychological well-being. We follow a holistic approach, which means we are not only concerned with the legal procedures, we will also provide you with the tools, support and referrals to other professionals that you need in order to transition from being married to leading a successful single life, and where you have children, to assist them to acclimatise to their new “family life”.

Beneficial links

Divorce Act 70 of 1979 - <https://www.gov.za/sites/www.gov.za/files/Act%2070%20of%201979.pdf>

Divorce Courts Amendment Act 65 of 1997 - http://www.saflii.org/za/legis/num_act/dcaa1997260.pdf

Jurisdiction of Regional Courts Amendment Act 31 of 2008 - <http://www.justice.gov.za/legislation/acts/2008-031.pdf>

Mediation in Certain Divorce Matters Act 24 of 1987 -

<https://www.gov.za/sites/www.gov.za/files/Act%2024%20of%201987.pdf>

Short Process Courts and Mediation in Certain Civil Cases Act 103 of 1991 -

<https://www.gov.za/sites/default/files/Act%20103%20of%201991.pdf>

Supreme Court Act 59 of 1959 - <https://www.gov.za/sites/www.gov.za/files/Act%2059%20of%201959.pdf>

Guidelines issued by Registrar, Durban high court “Procedure for the allocation of trial dates” available at

<https://www.lawsoc.co.za/default.asp?id=2009>

High Court Practice Directive 31 available at <http://www.lawlibrary.co.za/default.asp?sl=&id=1980>

Mediation Rules of the Magistrate’s Courts (inserted into the rules by GN R183 in GG 37448 of 18 March 2014) -

http://www.justice.gov.za/legislation/notices/2014/2014-03-18-gg37448_rg10151_gon183-rules-mc.pdf