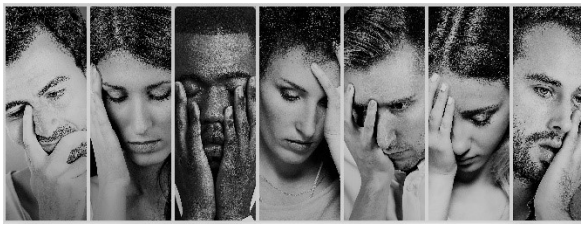
MEDIATION NETWORK

FIGHT, FLIGHT OR MEDIATE



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Your divorce questions answered

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

Try marriage counselling 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.

Legal grounds for divorce

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

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

"FAMILY MEDIATION SERVICES THAT ARE FAIR, AFFORDABLE and EFFICIENT"

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 (as long as this is not through circumstances beyond your control);
- 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.

How do I get divorced?

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 Family Justice 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 uncontested divorce?

In a contested divorce the parties will dispute one or more of the following 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 finalize the case. The legal costs of uncontested divorces are much lower than in contested divorces and no legal representation is needed. A Family Justice accredited mediator can assist the parties to reach settlement and the parties need not have legal representation.

How will our property be divided?

If you can't 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

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 can't agree, the court as upper guardian of all minors will decide, usually on recommendation by the office of the family advocate.

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.

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 considered:

- 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?
- 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 considered.

What is mediation?

Mediation is a voluntary process of structured negotiation that can help two parties in conflict to resolve their differences. Mediation is not a form of counselling. It opens discussion and helps you work through the different legal issues that need to be settled when getting a divorce.

A skilled mediator assists families to work out creative arrangements for themselves and their children. The settlement agreement is then made an order of court. The agreement could include the division of your estate, maintenance, a parenting plan, and any other arrangements that are in the best interests of your minor children. Parents should carefully consider the views of their children when negotiating contact and care arrangements.

Mediation is cost effective, less stressful than traditional litigation and saves time. It also helps parties maintain a positive ongoing relationship after divorce, especially when children are involved.

Have you applied your mind to the following potential consequences if the disagreements are not resolved?

- How much litigation will cost?
- How long it may take for litigation to be completed?
- The likelihood that even if you win the case, you may not be able to recover your costs from the other party?
- The personal and productive time taken up by preparation, consultation and court attendances during litigation?
- The effect litigation may have on your relationship with the children?

What do we offer?

- **Divorce Mediation**

  Divorce is stressful for the entire family. Mediation provides a facilitated, legally formalized process of negotiations.

  We offer clients access to our panel of:

  - Mediators
  - Attorneys
  - Social workers
  - Financial advisors
  - Psychologists
  - Play therapists

- **Parenting Plans**

  A Parenting Plan is a roadmap for separated or divorced parents. It ensures co-operation from both parents for a better future for their child. It helps to reduce future conflict by reducing tension and stress of the entire family.

  MEDIATION NETWORK provides a comprehensive plan for a fraction of the cost in a more timeous manner compared to conventional channels.

- **Maintenance Assistance**

  Every child deserves to be maintained by BOTH parents. This can be achieved through a mediated process that is confidential and transparent. It can also be referred to our panel of experts to ensure that the child remains protected, and the individual parents are not taken advantage of.

NABFAM accredited mediators

Scan for more information on our website