



TRI MEDIATION

SUPPORT • UNDERSTANDING • RESOLUTION

Uncontested Divorces

A starting guide.





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My partner and I are considering a divorce

Divorce should never be the first choice when marital problems arise.

If you believe that a marital counsellor may be able to help, seek counselling. **Should a divorce be inevitable, speak to a mediator.** Under South African law, one cannot prohibit a partner from approaching the Court for a divorce. Not participating in the divorce could negatively affect the outcome. That Party would be denied the opportunity of giving inputs to the Decree of Divorce.

Legal grounds for divorce

Either of the Parties need to prove to the court that the marriage has broken down irretrievably. The conditions for this include, *inter alia*:

- ♥ Adultery
- ♥ Constant arguing
- ♥ Abuse of any kind by either of the spouses
- ♥ Loss of love between the spouses
- ♥ A spouse has moved out of the house
- ♥ Neglecting to support financially
- ♥ Habitual criminality

What will happen to our Children?

Both Parties need to agree on who will be the primary caregiver. In recent years our Courts have shown greater flexibility with regards to shared care (shared custody), where the Children spend a period of time with one spouse and the same period of time with the other (subject to age considerations – a social worker may be appointed to compile a report in this regard).

Should the Parents not be able to agree, the Court – as upper guardian of all minors – will decide on the matter, usually on recommendation by The Office of the Family Advocate. The Court may hold the Parties liable for the cost of a social worker's report obtained in this regard.

Given the stress of the divorce itself, the Children should ideally not be subjected to further distress, Mediation enables the Parents to work out their differences and minimize the impact on their Children.

How will our property be divided?

If the Parties are unable to arrive at a settlement, the court may decide to liquidate the assets and divide the net returns based on the applicable marital property regime.

Typically there is a loss in the value of the returns as the assets are liquidated.

Mediation however, is not limited by these processes: **the goal is to find out-of-the-box solutions and to lose as little as possible** in terms of the value of the shared estate. Where needs be, the services of an expert (financial / property / business) can be employed to this effect.

What is the difference between contested & uncontested divorces?

A **contested divorce** is typically where the Parties disagree on:

- ♥ with whom the Children should live
- ♥ contact with the Children
- ♥ maintenance for the Children or the spouses
- ♥ division of the communal estate

Contested divorces usually entail multiple Court appearances which dramatically increase the cost to each of the Parties.

Uncontested divorces occur when the Parties agree on all aspects and sign a Divorce Settlement Agreement, which the Court incorporates into the Decree of Divorce. Costs are substantially lower, and legal representation is not required.

At the end, the mediator instructs the Parties on filing or, if preferred, helps appoint legal representation. The Parties appear in Court only as a formality, with no trial. Once the Decree of Divorce is issued, the matter is finalised and the Parties are required to adhere to the Court Order.



How does Child Maintenance work?

Every Parent is legally required to pay Child Maintenance until their Child is 18 years old. Should the Child not be self-supporting on their 18th birthday the Parent is then required to continue paying until the Child can support herself/himself.

Child Maintenance is payable in proportion to the Parents' incomes, and include all costs for raising the Child. The first step is to calculate the actual costs (including housing, food, educational & medical expenses, etc.)

Any expenses of the Child at both Parents' houses are then calculated and factored into the required Child Maintenance payments.

Consider the below example: (simplified)

Cost of raising Child	R 5,000
Parent 1 Income	R 20,000
Parent 2 Income	R 12,000
Parent 1's shares of Expenses	62.5%
Parent 2's shares of Expenses	37.5%
Parent 1's total Contribution	R 3,125
Parent 2's total Contribution	R 1,875

Any expenses of the child at both Parent's house are then calculated and factored into the required Child's Maintenance payments.

Do both Parents have Parental Rights and Responsibilities towards the Minor Children?

In terms of the Children's Act 38 of 2005, Parents have the following rights and responsibilities towards their Children:

To care for their Child, to have regular Contact with their Child and to maintain a meaningful relationship, to act as Guardian of the Child and to contribute in respect of Child Maintenance.

Do I have to pay Spousal Maintenance?

The mutual duty between spouses to maintain each other usually ends when the marriage is dissolved – unless certain factors apply which demand otherwise.

If only one of the spouses was the breadwinner, the Court may instruct the other spouse to maintain the standard of living to which the other spouse had become accustomed.

Here the Court will take into consideration factors like:

- 📍 Assets obtained from the Divorce
- 📍 Ability to re-enter the job market or generate an income
- 📍 Age and health
- 📍 Reasons for unemployment if the person was not working for an extended period during the marriage
- 📍 Duration of the marriage

The Court may decide to award Spousal Maintenance for a limited period of time to enable a spouse to re-enter the job market.



Image courtesy @lifestylephoto1

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Megan Fleetwood is a South African Association of Mediators (SAAM) accredited Family and Divorce Mediator with personal experience of divorce and co-parenting.

What is mediation?

Mediation is a voluntary process of structured negotiation between two or more Parties that enables the Parties to resolve any differences and arrive at mutually acceptable solutions to a legal problem.

Because the solution is designed by both Parties, the chances that one of the Parties will default or go back on the agreement are substantially lower.

Find out why over 60 of our country laws have been updated in recent years to accommodate Mediation as a critical component of the Legal process.