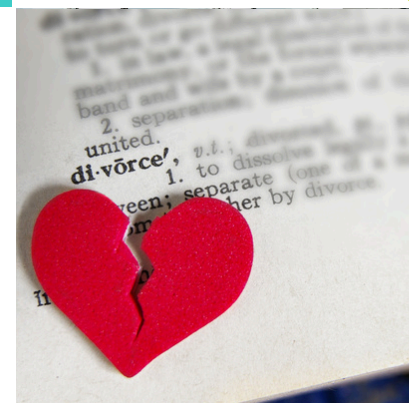


The Beginner's Guide to **Understanding Divorce in South Africa**

To understand the divorce process in RSA, its legal and financial consequences continue reading...

Read more >>



Introduction: Divorce in South Africa

Divorce can be one of the most emotionally and financially challenging experiences a person faces. This guide was created to help you understand the legal process of divorce in South Africa, your rights, and the steps you can take to protect yourself and your loved ones.



TYPES OF DIVORCE IN SOUTH AFRICA

There are two main types:

- **Uncontested Divorce:** Both spouses agree on key issues like property, children, and support. It's quicker and more affordable.
- **Contested Divorce:** Spouses disagree on one or more issues. This often involves court proceedings and can take longer.



Parties can also opt for alternative dispute resolution and chose to have their divorce issues resolved through divorce mediation.

Introduction: Divorce in South Africa



GROUNDS FOR DIVORCE CONTINUED

What Constitutes Irretrievable Breakdown?

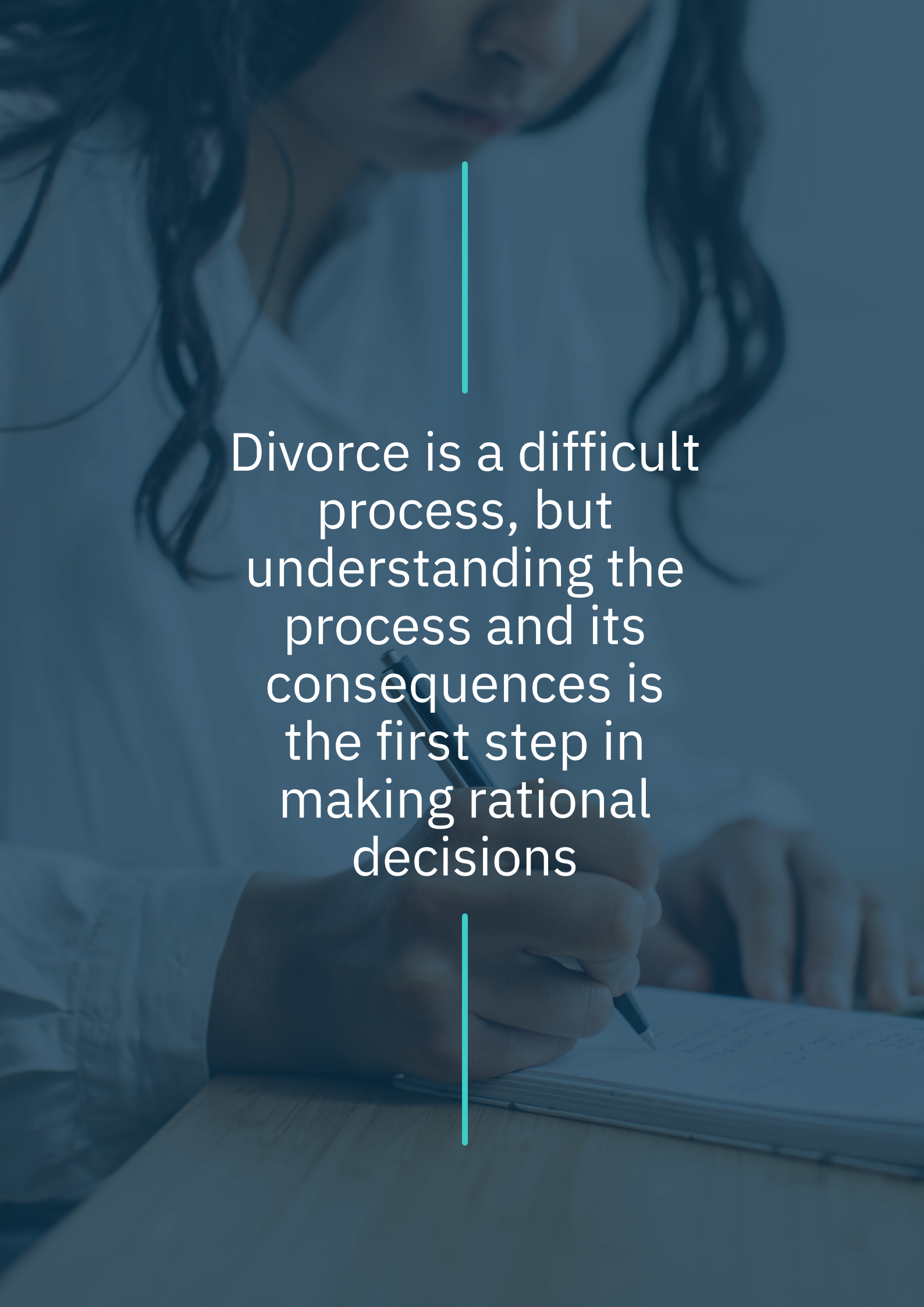
The court may consider evidence such as:

- Long-term separation
- Lack of communication
- Adultery (not to assign blame, but to show breakdown)
- Domestic abuse
- Incompatibility or constant conflict

However, **proof of fault is not required**—it is enough to show that the marriage cannot be restored.



The Court will also question whether the parties attended counselling or attempted in any way to resolve the conflict in order to ascertain the possibility of a healthy restoration of the marriage



Divorce is a difficult
process, but
understanding the
process and its
consequences is
the first step in
making rational
decisions

The Divorce Process : Explained

The Divorce Process can be arduous, financially strenuous and emotional. However, with the right team of legal experts and support systems, you will have the required mind-space to endure the process.

It is important to note that the process may look different for Contested and Uncontested Divorces, however the steps to commence the process are standard.



PREPARATION IS KEY

- Before commencing the divorce process, take the time to consider your options, and ensure that you have all necessary documentation (i.e. the original marriage certificate, minor kids birth certificates etc.)
- Get educated on the process, consequences and costs.
- Reflect on your personal situation and note down what are the best interests for yourself and your family.

Doing the above will ensure that you make informed and well-thought out decisions throughout the process.

Now, you are equipped to proceed to the process.



STEP ONE: CONSULTING YOUR LAWYER

Your attorney will listen to your specific circumstances and advise you on the options best suitable for you. The costs to be expected will also be explained as well as the course of action to follow including the documents to be drafted and their importance.

STEP TWO: ISSUING SUMMONS

Whether your matter is contested or uncontested, a summons must be issued to commence the process. A Summons is a legal document that is drafted setting out your request for divorce, the grounds and particulars related to maintenance, children born from the marriage and division of the estate. The Summons is issued at the Regional or High Court of RSA



STEP THREE: SERVING THE SUMMONS

Once the Summons is drafted and issued, it is sent to the Sheriff of the court for service. The Sheriff is instructed to serve the summons on your husband/wife who you intend to divorce. This is a crucial step in the process and can not be excluded.





STEP FOUR: THE RESPONSE

Your spouse/estranged partner will then have an opportunity to file a response. This document is referred to as a Plea and contains a detailed response to the clauses in your summons.

STEP FIVE: SETTLEMENT AGREEMENT


If your matter is uncontested, your spouse will not file a response, instead a settlement agreement will be drafted and signed by both of you. If there are minor children involved, the settlement agreement will need to go to the family advocates office for endorsement. Once completed, you can appear in court to obtain your divorce decree.



STEP SIX: COURT APPEARANCE

For contested matters, the process in between Step 4 and appearing in court can be lengthy as it includes further service of documents and discovery as well as pre-trial steps which your attorney will clarify for you. Only once these pre-trial requirements are met will you be able to appear in court for a divorce trial whereafter judgement will be granted in your matter.





**Financial Stability
after divorce** is
important to ensure
that your well-being
and the interests of
any minor children
are met

Financial Consequences: division and maintenance explained

Financial disputes often end up being the most contentious issues at the time of a divorce. However, having an experienced attorney can help you navigate these issues with ease in a professional and dignified manner.



DIVISION OF THE JOINT ESTATE

The Division of your joint estate will be primarily guided by your marital regime;

If you and your spouse were married in **Community of Property** then your Assets and debts ought to be shared equally.

If you and your spouse were married **Out of Community (With Accrual)**, then the Growth of your joint estate during the marriage ought to be shared fairly.

If you were married **Out of Community (Without Accrual)**, then each party keeps their own estate.

Financial

Consequences: division and maintenance continued

The above however is very simplified explanation and must be understood in more detail. To learn more, download our ebook titled “**Money Matters in Divorce**”



MAINTENANCE

Spousal Maintenance: This is not automatically granted and a reasonable case should be set out requesting for spousal maintenance. A spouse may seek temporary (otherwise known as rehabilitative) or permanent maintenance.

The Courts consider the following factors:

- Length of the marriage
- Financial positions
- Earning capacity
- Age and health



Be sure to ask your attorney about an Interim Maintenance Application which can be instituted simultaneously with the issuing of your summons.

The Minor Child: Contact, care and child maintenance explained

In most divorce cases, it is the minor child that is burdened most with the weight of a divorce. It is therefore of utmost importance that the well-being and best interests of the minor child are prioritised throughout the process.



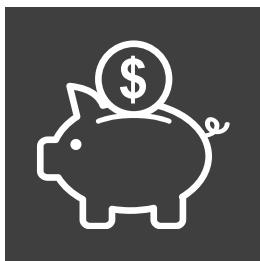
CONTACT AND CARE

PARENTAL RESPONSIBILITIES AND RIGHTS

The implementation of the Children's Act, Act 38 of 2005 has changed the terminology previously used in respect of children. It has also defined the parental rights and responsibilities that parents or other parties may have. Upon divorce, parties are required to set out what arrangements are to be made in respect to the care and contact of the minor child. These arrangements are set out in a parenting plan. A parenting plan is a formal agreement concluded between the parties, in which they mutually agree to the terms upon which their parental rights are to be exercised.

The Minor Child: Contact, care and child maintenance continued

When drafting the parenting plan, emphasis is made on the best interests of the minor child and the parenting plan ought to be drafted in alignment with this. The parenting plan will set out the minor child's primary residence, visitation with the other parent, the minor child's well-being and will also include aspects around maintenance in respect to the minor child. For a more detailed explanation on this, purchase our **Parenting Plan Guide**.



CHILD MAINTENANCE

Child Maintenance is a legal duty of BOTH parents. It must be understood that child maintenance is a joint parental responsibility. If spouses are able to grasp this early in the divorce process, they are able to reach a fair agreement on how the minor children are to be maintained, ultimately resulting in their best interests being met.

If an agreement can not be reached by parties, the Court as primary guardian of the minor child is entitled to make an order that will be suitable



Frequently asked questions...

Q: Can I get divorced without a lawyer?

A: Yes, but legal guidance helps avoid costly mistakes.

Q: How long does a divorce take?

A: Uncontested: 4–8 weeks.

Contested: 6 months to several years.

Q: Do I have to go to court?

A: Yes, but often only once for finalisation if uncontested.



WHY SHOULD I GET AN ATTORNEY ?

A divorce lawyer helps you navigate the difficult journey of divorce by:

- Understanding your rights
- Protecting your assets and your interests
- Drafting legally sound agreements and court documents
- Representing you in negotiations and
- Appearing on your behalf in court
- Reducing emotional and legal stress



GET IN TOUCH WITH US

At AW ATTORNEYS, we are specialists in the field. Our attorneys are focused on providing sound legal advice and at the same time establishing a safe platform for our clients to raise their concerns when it comes to matters related to family, divorce and matrimony. We provide an all-inclusive all-encompassing service by handling each matter with compassion, respect and utmost confidentiality.



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