

# QUICKLAW

ANSWERS YOUR QUESTIONS

## DIVORCE

### My partner and I have decided to get divorced - What is the first thing we should do?

- Go for counselling in an attempt to save your marriage, or
- Attend mediation - mediation is a process where the partners get together to try and settle the matter with the help of an objective person called a mediator. Mediation is not a form of counselling. It opens up discussion and helps you work through the different legal issues that need to be settled between you.

*In many instances marriages can be saved - sometimes all that is necessary is for a counsellor or a mediator to intervene and put everything into perspective for the couple.*

### What the court sees as grounds for divorce

- There are only two grounds for divorce:-
  - Irretrievable breakdown of the marriage and
  - Mental illness or continued unconsciousness of one of the partners.
- Divorce is not based on fault. This means that it is not important whose fault it is that the marriage has come to an end.
- A court may accept any evidence showing that the marriage has broken down irretrievably.

Here are some examples:

- A spouse moving out of the house.
- Abuse of any kind towards the spouse or the children.
- Adultery.
- Habitual Criminal.
- 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.
- Drunkenness or drug addiction.
- Constant arguing, sulking or nagging.
- Obsession with a particular religious sect or political group.
- Loss of love between the partners.

### What will happen to the children?

This must be decided by both parties. If no agreement can be reached, the court as upper guardian of all minors will make the decision for you.

### How will the property be divided?

If you cannot agree on how the property should be divided, the property will be divided according to the way you were married, i.e. in community of property, out of community of property or out of community of property with accrual. The court also has a discretion to divide the property when misconduct can be proved against the other party.

### How do I obtain a divorce?

- Only a High Court or Divorce Court can grant you a divorce.
- It is possible to conduct your own divorce proceedings but it is advisable to get the help of an attorney, especially to resolve issues such as dividing the property, maintenance and custody of children.

### What will an attorney do for me?

An attorney will be able to assist you with the following legal issues and procedures:-

- Serving and filing summons.*
- Defending a summons.*
- Division of matrimonial property and other assets.*
- Custody, access and maintenance for the children.*
- Maintenance for your spouse.*

### How much will a divorce cost?

- undefended divorces cost less than defended divorces.
- Attorneys also charge different fees and therefore the cost will differ depending on which attorney you use.

### What if I don't want to use an attorney and I want to conduct the divorce myself?

- It is advisable to go to a Divorce Court in your area.
- They will be able to guide you and assist you with your divorce.

#### KEY:

1. COUNSELLING - a counsellor advises or recommends a solution to your problem
2. MEDIATION - a mediator acts as a peacemaker between two people in a dispute