FAMILY LAW

# Divorce

*When spouses have marital problems, they can either try to save the marriage through counselling or if there is no chance of saving the marriage, they can decided to dissolve the marriage through a divorce.*

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### For all your divorce answers, simply follow our guide below:

1. When can spouses get a divorce?
2. What will happen to the children upon divorce?
3. How will the property be divided upon divorce?
4. How can a person get a divorce?
5. How can LegalWise assist you?

When spouses have marital problems, they can either try to save the marriage through counselling or if there is no chance of saving the marriage, they can decided to dissolve the marriage through a divorce.

## 1. When can spouses get a divorce?

- ◦ There are only two grounds for divorce, namely the:
  - ◦ irretrievable breakdown of the marriage (the marriage relationship has reached such a state of disintegration, that there is no reasonable possibility that the relationship can be restored); or
  - ◦ mental illness or continued unconsciousness of one of the spouses.

- ◦ Examples of the irretrievable breakdown of a marriage as a ground for divorce include:
  - ▪ the spouses not living together for a continuous period of one year;
  - ▪ abusive behaviour by one spouse towards the other spouse or the children;

        - adultery (for example, when one of the spouses has a sexual relationship with someone else);
        - habitual criminality;
        - drunkenness or drug addiction; or
        - loss of love and affection between the spouses.
    - Divorce is not based on fault and the divorce will not be based on whose fault it was.

## 2. What will happen to the children upon divorce?

- Arrangements regarding the children born from the marriage and/or adopted children, such as with whom the children will stay after the divorce and maintenance, can be agreed upon by both spouses.
- If no agreement can be reached between the spouses, the court will make the decision regarding the children after considering the circumstances of the matter, together with the observation and recommendations made by a Family Advocate.

## 3. How will the property be divided upon divorce?

- Division of property can be agreed upon by both spouses.
- If no agreement can be reached between the spouses, the property must be divided according to whether the spouses were married in community of property or out of community of property (with or without the accrual system).
- The court has a discretion to divide the property in any manner it deems fit when misconduct can be proven against one of the spouses. For example, if one spouse abused the other spouse and such abuse is the cause of the divorce. In such a case, the court may decide to divide the property in a way that the abusing spouse gets less than what s/he would have been entitled to.

## 4. How can a person get a divorce?

- Only a High Court or Regional Court can grant a divorce.
- A spouse who wants to get a divorce starts the procedure by serving a summons on the other spouse.
- The other spouse can either agree to the divorce or defend the divorce.

- A professional, such as a legal practitioner, will be able to assist a spouse with the following:
    - serving and filing of a summons;
    - defending a divorce;
    - division of the property;
    - care, contact and maintenance in respect of the children; and/or
    - spousal maintenance.

## 5. How can LegalWise assist you?

Should you require an explanation of your rights on this topic, please contact your nearest LegalWise Branch , call, e-mail or WhatsApp us. For more information about our membership options visit our legal services page or visit our join now page.

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