

# Complete Guide: How Divorce Works in South Africa

## Step 1: Decide to Divorce

A divorce can only be granted if the marriage has broken down irretrievably. This means there's no reasonable chance of reconciliation. Examples include long-term separation, adultery, abuse, or living completely separate lives.

## Step 2: Decide on the Type of Divorce

Uncontested Divorce (Simpler & Cheaper): Both parties agree on all issues. A Settlement Agreement is drafted and submitted to court. Divorce can be finalised within weeks. Contested Divorce (Longer & Costly): Spouses cannot agree. The court decides. This may take months to years.

## Step 3: Choose the Right Court

Regional Magistrates' Court: Handles most divorces. High Court: May also be used, especially for complex cases. The court must have jurisdiction, usually where one of the spouses lives or works.

## Step 4: Prepare Divorce Papers

The spouse starting the divorce (Plaintiff) prepares a Summons, Particulars of Claim, and Settlement Agreement (if both spouses agree). Supporting documents may include marriage certificate, ID copies, children's birth certificates, proof of assets and debts.

## Step 5: Serving Divorce Papers

Papers must be served on the other spouse (Defendant) by the Sheriff of the Court, ensuring proper legal notice.

## Step 6: Defendant's Response

The Defendant has 10 days to respond if in the same province, or 20 days if in another province. No response = uncontested. Notice to Defend = contested. Counterclaim = Defendant makes own claims.

## Step 7: Discovery & Negotiation

If contested, both parties exchange financial and other documents. Negotiation or mediation is encouraged to avoid trial.

### **Step 8: Settlement Agreement**

Agreement covers child care, maintenance, property, and costs. Once signed, it becomes a court order.

### **Step 9: Trial (If No Agreement)**

If no settlement is reached, both parties present evidence in court. A judge decides and grants divorce.

### **Step 10: Children's Interests**

The Children's Act ensures the best interests of the child are the priority. A Family Advocate may investigate and advise the court.

### **Step 11: Division of Property**

In Community of Property: Assets and debts shared equally. Out of Community without Accrual: Each keeps own assets and debts. Out of Community with Accrual: Each keeps own assets, but estate growth is shared.

### **Step 12: Final Hearing**

Uncontested: Short court appearance. Contested: Trial before a judge. Court issues a Decree of Divorce, officially dissolving the marriage.

### **Step 13: After Divorce**

Register divorce with Home Affairs. Update ID, financial records, tax status, will, and beneficiaries. Make new parenting and financial arrangements.

### **Practical Timeline**

Uncontested Divorce: ± 4–8 weeks. Contested Divorce: ± 1–3 years.

### **Costs**

Uncontested Divorce: ± R8,000.00 – R20,000.00 (excluding Sheriff's fees). Contested Divorce: Costs vary, often tens of thousands of rands, depending on how long it runs.

## **Summary**

Decide whether divorce is contested or uncontested. File and serve papers. If uncontested: quick and cost-effective. If contested: prepare for negotiation or trial. Court issues a decree of divorce. Handle post-divorce admin immediately.