



Daker Street 29  
New York 20826  
lily@aldreneriksen.com  
www.lilyaldreriksen.com

# DIVORCE DECREE



# SUMMIT

MEDIATORS

DIVORCE INFO BOOKLET

# MEDIATED DIVORCES EXPLAINED

## 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, as that Party would be denied the opportunity of giving inputs to the Decree of Divorce.

## LEGAL GROUNDS FOR A DIVORCE

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

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



## 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 regarding shared care (shared custody), where the Children spend a period 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 the upper guardian of all minors, will decide, 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. 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.

## FEELING OVERWHELMED BY THE CONFLICT IN FRONT OF YOU?

Does it feel like a mountain you can't climb alone..? At Summit Mediators, we walk beside you, helping you navigate emotional terrain, find steady ground, and reach the peace you deserve.

## HOW WILL OUR PROPERTY BE DIVIDED

If the Parties cannot reach a mutual settlement, the court may decide to liquidate their assets and divide the net returns based on the applicable marital property regime. Typically, the value of the returns will decrease as the assets are liquidated.

These processes do not limit mediation. The goal is to find innovative solutions and to lose as little as possible in terms of the value of the shared estate. Where needed, the services of an expert (financial / property/business) can be employed to this end.

The Parties appear before the Court as a formality, but there is no trial. Once the Decree of Divorce is issued, the matter is finalized, 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. If the Child is not self-supporting on their 18th birthday, the Parent is then required to continue paying until the Child can support themselves.

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

## DO BOTH PARENTS HAVE PARENTAL RIGHTS AND RESPONSIBILITIES?

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, to maintain a meaningful relationship, to act as Guardian of the Child and to contribute in respect of Child Maintenance.

## WHAT IS THE DIFFERENCE BETWEEN CONTESTED AND 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, dramatically increasing the cost to each party.

Uncontested divorces are where the Parties agree on all aspects and sign a Divorce Settlement Agreement, which the Court then incorporates into its Decree of Divorce. Costs are substantially lower, and the Parties do not need legal representation.

At the end of the process, the mediator instructs the Parties on how to file for divorce without legal representation, or if the Parties choose, assists in appointing a legal representative to file the case with the Court.



## 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 award Spousal Maintenance to them to either maintain the standard of living to which they 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.

## WHAT IS MEDIATION?

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

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

At the end of the process, the Parties have the option of filing the divorce directly with Court (full instructions provided), or to have a third party legal representative file the divorce on their behalf. Please enquire for full details on the difference between the 2.

## BEFORE YOU GO TO MEDIATION:

Think about what you want to get out of mediation before you start. Mediation is more likely to succeed if you can spend the sessions focusing on things you really disagree on.

If you're trying to reach an agreement about money or property, you'll need to fill out a financial disclosure form when you go to mediation.

You'll have to include all your financial information, for example:

- Your income - for example, from work or benefits
- What you spend on living costs - such as transport, utilities and food
- How much money you have in bank accounts
- Debts you owe
- Property you own

Start gathering bills and bank statements together to take to the first mediation meeting. Some mediators will send you a form like this to fill in before your first appointment.

It's important that you and your ex-partner are honest when you talk about your finances. If your ex-partner later finds out you tried to hide something from them, any agreement you make might not be valid. Your ex-partner could also take you to court for a larger share of your money.

If you have children, your mediator will normally focus on what's best for them and their needs.



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Book a consultation or discovery call and  
take the first step toward resolution

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+27 (0)82 316 9022

[mediate@summitmediators.com](mailto:mediate@summitmediators.com)