

ZA Know Your Rights: Divorce in South Africa

Prepared by RW KRUGER AND ASSOCIATES INC

By Attorney Ruan Werner Krüger

(Public Legal Education Guide)

1. Understanding Divorce in South Africa

Divorce is the **legal termination of a marriage** under the **Divorce Act 70 of 1979**, the **Marriage Act 25 of 1961**, and applicable civil law.

South African law allows divorce based on **irretrievable breakdown of the marriage**, proven by facts such as:

- Living apart for at least one year,
- Continuous conflict, or
- Serious misconduct (e.g., adultery, abuse).

Divorce proceedings determine:

- Division of **assets and liabilities**,
 - **Custody and care** of children,
 - **Maintenance** obligations, and
 - Formal **termination of marriage** in law.
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2. Who Can File for Divorce

- Either **spouse** may file for divorce.
 - In case of minors or dependent children, the **Family Advocate** must be involved.
 - Both **civil and customary marriages** are subject to the Divorce Act, though customary marriages must also comply with **Customary Marriages Act 120 of 1998**.
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3. Jurisdiction

Divorce proceedings are generally filed in the **High Court** or **Regional Magistrate's Court**, depending on:

- The **value of the estate** or immovable property, and
- The **location** of the parties' domicile.

High Court jurisdiction is mandatory if:

- Complex asset division,
- International parties involved, or
- A **customary marriage** requires High Court oversight.

4. Role Players in the Divorce Process

Role	Function
Client / Spouse	Initiates the divorce or responds to summons; provides all information and documentation.
Attorney / Legal Practitioner	Advises, drafts pleadings, negotiates settlements, and represents the client in court.
Registrar of the Court	Accepts and processes summons, issues court dates, authenticates pleadings.
Family Advocate	Protects interests of minor children; investigates custody, access, and maintenance matters.
Judicial Officer / Judge / Magistrate	Oversees hearings, approves settlements, and grants final decree of divorce.
Defendant / Respondent	Responds to divorce action and interim applications, may negotiate or contest aspects such as asset division or custody.

5. Step-by-Step Divorce Procedure

Step 1: Initial Consultation

- Client provides: marriage certificate, ID, financial statements, assets/liabilities, and children's details.
- Attorney assesses: **grounds for divorce, property division, maintenance obligations, child custody**, and likely **duration of proceedings**.

Step 2: Drafting & Filing Divorce Papers

1. Summons & Particulars of Claim

- Summons formally notifies the respondent spouse of the divorce action.
- Particulars of Claim explain: grounds for divorce, requested outcomes (custody, property division, maintenance).

2. Court Submission

- Attorney lodges documents with the **Registrar**.
- Registrar authenticates record and schedules initial court appearance.

3. Service of Summons

- Respondent is formally served, typically via sheriff of the court.
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Step 3: Pleadings & Notices

- Respondent may file **Notice of Intention to Defend** or **Answer**.
 - Attorneys exchange pleadings if disputes arise on:
 - Asset division,
 - Child custody and maintenance,
 - Spousal maintenance.
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Step 4: Pre-Trial Procedures

- **Discovery:** Both parties disclose financial statements, property, and relevant documents.
 - **Family Advocate's report:** Mandatory where minor children are involved.
 - **Settlement discussions / Mediation:** Optional but encouraged to resolve disputes out of court.
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Step 5: Trial / Hearing

- Court hears both parties, considers evidence and witnesses, reviews Family Advocate reports.
- Court may issue **interim orders** for custody, maintenance, or protection.

- Final arguments are presented before judgment.
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Step 6: Draft Order & Final Decree

- **Draft Order** prepared by the attorney summarizing agreed or court-decided terms.
 - Court reviews, amends if necessary, and signs.
 - **Final Divorce Decree** issued, formally terminating the marriage.
 - Registrar updates official marriage records.
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6. Key Documentation Needed

Document	Purpose
Marriage certificate	Proves the legal marriage.
ID / Passport	Confirms identity of spouses.
Financial disclosure / statements	Supports asset division and maintenance calculations.
Property deeds & valuations	Division of immovable property.
Bank statements / retirement funds	Equitable distribution and maintenance calculations.
Birth certificates of children	Custody, access, and maintenance.
Family Advocate reports	Ensures children's best interests are protected.
Previous court orders (if any)	References prior agreements or maintenance orders.

7. Drafting Forms and Legal Papers

Attorney prepares / manages the following:

1. **Summons (Form 1)** – Notifies respondent of divorce proceedings.
2. **Particulars of Claim (Form 2)** – Explains grounds for divorce and relief sought.
3. **Notice of Intention to Defend (Form 3)** – Filed by respondent if contested.

4. **Pleadings (Form 4)** – Responses, replication, or rejoinder as required.
5. **Settlement Agreements (Form 5)** – Optional, sets out agreed terms for custody, maintenance, or property.
6. **Draft Divorce Order (Form 6)** – Summarizes court-approved settlement or judgment.

Note: Forms vary slightly between **High Court** and **Magistrate Court**, but all are authenticated by the **Registrar**.

8. Children and the Family Advocate

- The **Family Advocate** is involved in **all cases with minor children**.
 - Duties include:
 - Assessing custody and guardianship arrangements,
 - Recommending maintenance amounts,
 - Ensuring the **best interests of the child** principle is applied.
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9. Court Attendance

- Attorneys represent clients at **issue stage, pre-trial conferences, and trial**.
 - **Court hearings:** may include:
 - Settlement applications,
 - Interim maintenance orders,
 - Final trial and judgment.
 - The **Registrar** authenticates documents and files court records.
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10. Role of Attorneys

Rob Green & Associates assists with:

- Strategic advice on contested or uncontested divorces.
- Drafting and filing all summons, particulars of claim, and pleadings.
- Coordinating with the Family Advocate, valuers, and court.
- Negotiating settlements on **custody, maintenance, and asset division**.

- Representing clients in all court stages.
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11. Tips for a Smooth Divorce Process

1. Keep **all financial and personal records** organized.
 2. Respond **promptly to notices** and court deadlines.
 3. Attend **Family Advocate interviews** with children's best interests in mind.
 4. Maintain **civil communication** to prevent delays or escalation.
 5. Seek **legal advice** early — contested divorces are often lengthy and costly.
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Contact

RW KRUGER AND ASSOCIATES INC

By **Attorney Ruan Werner Krüger**

 Offices in Somerset West

 ruan@rwkrugerandassociatesinc.com

 [RW Kruger and Associates Inc | Attorneys](#)

 +27 (0) 82 870 0058