



**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT /
NATIONAL PROSECUTING AUTHORITY - TRAINING ON THE MAINTENANCE ACT 99 OF 1998**

EXCERPTS OF THE DIVORCE ACT 70 OF 1979 (for spousal maintenance matters)

Section 7 of Divorce Act 70 of 1979

1. Division of assets and maintenance of parties

(1) A court granting a decree of divorce may in accordance with a written agreement between the parties make an order with regard to the division of the assets of the parties or the payment of maintenance by the one party to the other.

(2) In the absence of an order made in terms of subsection (1) with regard to the payment of maintenance by the one party to the other, the court may, having regard to the existing or prospective means of each of the parties, their respective earning capacities, financial needs and obligations, the age of each of the parties, the duration of the marriage, the standard of living of the parties prior to the divorce, their conduct in so far as it may be relevant to the break-down of the marriage, an order in terms of subsection (3) and any other factor which in the opinion of the court should be taken into account, make an order which the court finds just in respect of the payment of maintenance by the one party to the other for any period until the death or remarriage of the party in whose favour the order is given, whichever event may first occur.

(3) A court granting a decree of divorce in respect of a marriage out of community of property -

(a) entered into before the commencement of the Matrimonial Property Act, 1984, in terms of an antenuptial contract by which community of property, community of profit and loss and accrual sharing in any form are excluded, or

(b) entered into before the commencement of the Marriage and Matrimonial Property Law Amendment Act, 1988, in terms of section 22(6) of the Black Administration Act, 1927 (Act No.38 of 1927), as it existed immediately prior to its repeal by the said Marriage and Matrimonial Property Law Amendment Act, 1988,

may, subject to the provisions of subsection (4), (5) and (6), on application by one of the parties to that marriage, in the absence of any agreement between them regarding the division of their assets, order that such assets, or such part of the assets, of the other party as the court may deem just be transferred to the first-mentioned party.

(4) An order under subsection (3) shall not be granted unless the court is satisfied that it is equitable and just by reason of the fact that the party in whose favour the order is granted, contributed directly or indirectly to the maintenance or increase of the estate of the other party during the subsistence of the marriage, either by the rendering of services, or the saving of expenses which would otherwise have been incurred, or in any other manner.

(5) In the determination of the assets or part of the assets to be transferred as contemplated in subsection (3) the court shall, apart from any direct or indirect contribution made by the party concerned to the maintenance or increase of the estate of the other party as contemplated in subsection (4), also take into account-

(a) the existing means and obligations of the parties, including any obligation that a husband to a marriage as contemplated in subsection (3)(b) of this section may have in terms of section 22(7) of the Black Administration Act, 1927 (Act 38 of 1927);

(b) any donation made by one party to the other during the subsistence of the marriage, or which is owing and enforceable in terms of the antenuptial contract concerned;

(c) any order which the court grants under section this Act or under any other law which affects the patrimonial position of the parties; and

(d) any other factor which should in the opinion of the court be taken into account.

(6) A court granting an order under subsection (3) may on application by the party against whom the order is granted, order that satisfaction of the order be deferred on such conditions, including conditions relating to the furnishing of security, the payment of interest, the payment of instalments, and the delivery or transfer of specified assets, as the court may deem just.

(7) (a) In the determination of the matrimonial benefits to which the parties to any divorce action may be entitled, the pension interest of a party shall, subject to paragraphs (b) and (c), be deemed to be part of his assets.

(b) The amount so deemed to be part of a party's assets, shall be reduced by any amount of his pension interest which, by virtue of paragraph (a), in a previous divorce-

(i) was paid over or awarded to another party; or

(ii) for the purposes of an agreement contemplated in subsection (1), was accounted in favour of another party.

(c) Paragraph (a) shall not apply to a divorce action in respect of a marriage out of community of property entered into on or after 1 November 1984 in terms of an antenuptial contract by which community of property, community of profit and loss and the accrual system are excluded.

(8) Notwithstanding the provisions of any other law or of the rules of any pension fund-

(a) the court granting a decree of divorce in respect of a member of such a fund, may make an order that-

(i) any part of the pension interest of that member which, by virtue of subsection (7), is due or assigned to the other party to the divorce action concerned, shall be paid by that fund to that other party when any pension benefits accrue in respect of that member;

(ii) an endorsement be made in the records of that fund that that part of the pension interest concerned is so payable to that other party;

(b) any law which applies in relation to the reduction, assignment, transfer, cession, pledge, hypothecation or attachment of the pension benefits, or any right in respect thereof, in that fund, shall apply *mutatis mutandis* with regard to the right of that other party in respect of that part of the pension interest concerned.

(9) When a court grants a decree of divorce in respect of a marriage the patrimonial consequences of which are according to the rules of the South African private international law governed by the law of a foreign state, the court shall have the same power as a competent court of the foreign state concerned would have had at that time to order that assets be transferred from one spouse to the other spouse.

8. Rescission, suspension or variation of orders.

(1) A maintenance order or an order in regard to the custody or guardianship of, or access to, a child, made in terms of this Act, may at any time be rescinded or varied or, in the case of a maintenance order or an order with regard to access to a child, be suspended by a court if the court finds that there is sufficient reason therefor. Provided that if an enquiry is instituted by the Family Advocate in terms of section 4(1)(b) or 2(b) of the Mediation in Certain Divorce Matters Act, 1987, such an order with regard to the custody or guardianship of, or access to, a child shall not be rescinded or varied or, in the case of an

order with regard to access to a child, not be suspended before the report and recommendations referred to in the said section 4(1) have been considered by the court.

(2) A court other than the court which made an order referred to in subsection (1) may rescind, vary or suspend such order if the parties are domiciled in the area of jurisdiction of such first-mentioned court or the applicant is domiciled in the area of jurisdiction of such first-mentioned court and the respondent consents to the jurisdiction of that court.

(3) The provisions of subsections (1) and (2) shall *mutatis mutandis* apply with reference to any order referred to in subsection (1) given by a court in a divorce action before the commencement of this Act.

9. Forfeiture of patrimonial benefits of marriage.

(1) When a decree of divorce is granted on the ground of the irretrievable break-down of a marriage the court may make an order that the patrimonial benefits of the marriage be forfeited by one party in favour of the other, either wholly or in part, if the court, having regard to the duration of the marriage, the circumstances which gave rise to the break-down thereof and any substantial misconduct on the part of either of the parties, is satisfied that, if the order for forfeiture is not made, the one party will in relation to the other be unduly benefited.

(2) In the case of a decree of divorce granted on the ground of the mental illness or continuous unconsciousness of the defendant, no order for the forfeiture of any patrimonial benefits of the marriage shall be made against the defendant.

10. Costs

In a divorce action the court shall not be bound to make an order for costs in favour of the successful party, but the court may, having regard to the means of the parties, and their conduct in, so far as it may be relevant, make such order as it considers just and the court may order that the costs of the proceedings be apportioned between the parties.

11. Procedure

The procedure applicable with reference to a divorce action shall be the procedure prescribed from time to time by rules of court.

12. Limitation of publication of particulars of divorce action.

(1) Except for making known or publishing the names of the parties to a divorce action, or that a divorce action between the parties is pending in a court of law, or the judgement or order of the court, no person

shall make known in public or publish for the information of the public or any section of the public any particulars of a divorce- action or any information which comes to light in the course of such an action.

(2) The provisions of subsection (1) shall not apply with reference to the publication of particulars or information-

(a) for the purposes of the administration of justice;

(b) in a *bona fide* law report which does not form part of any other publication than a series of reports of the proceedings in courts of law; or

(c) for the advancement of or use in a particular profession or science.

(3) The provisions of subsections (1) and (2) shall *mutatis mutandis* apply with reference to proceedings relating to the enforcement or variation of any order made in terms of this Act as well as in relation to any enquiry instituted by a Family Advocate in terms of the Mediation in Certain Divorce Matters Act, 1987.

(4) Any person who in contravention of this section publishes any particulars or information shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

13. **Recognition of certain foreign divorce orders**

The validity of a divorce order or an order for the annulment of a marriage or for judicial separation granted in a court of a foreign country or territory shall be recognized by a court in the Republic if, on the date on which the order was granted, either party to the marriage-

(a) was domiciled in the country or territory concerned, whether according to South African law or according to the law of that country or territory;

(b) was ordinarily resident in that country or territory; or

(c) was a national of that country or territory.

(Section 13(1)(2) and (3) amended by section 46 and 47 (First and Second Schedule) of Act 97 of 1986)

14. **Abolition of orders for restitution of conjugal rights and judicial separation**

It shall not be competent for a court to issue an order for the restitution of conjugal rights or for judicial separation.

15. **Application of Act.**

This Act shall not apply with reference to a divorce action or proceedings for the restitution of conjugal rights or for judicial separation instituted before the commencement of this Act.

Short title and commencement.

This Act shall be called the Divorce Act, 1979, and shall come into operation on 1 July 1979.

NOTE : SPOUSAL MAINTENANCE IS DEALT IN MAINTENANCE COURTS LIKE ANY OTHER MAINTENANCE MATTER.

THE SPOUSE CAN APPLY FOR AN ANNUAL INCREASE JUST LIKE IN ANY OTHER MAINTENANCE MATTER

THE RESPONDENT CAN APPLY FOR REDUCTION OR DISCHARGE OF THE DIVORCE ORDER

WHERE THE RESPONDENT IS BEING CHARGED FOR NON-COMPLIANCE AND THE COMPLAINANT IS OVER THE AGE OF 60 -ALTERNATIVE CHARGES IN TERMS OF THE OLDER PERSONS ACT 13 OF 2006 CAN BE ADDED

IF ALTERNATIVE CHARGES IN TERMS OF SECTION 30 OF THE OLDER PERSONS ACT IS ADDED WE CAN USE FORM 14 ON CONVICTION AND ADD THE RESPONDENT'S NAME ON THE LIST OF ABUSERS OF THE ELDERLY SINCE WITHHOLDING FINANCIAL MEANS FROM AN ELDERLY SPOUSE IS A FORM OF ECONOMIC ABUSE.

EVEN WHERE THE RESPONDENT IS CONVICTED ON THE MAIN CHARGE OF SECTION 31 OF THE MAINTENANCE ACT 99 OF 1998 THE DETAILS OF THE ACCUSED CAN BE ENTERD ON FORM 14 OF THE OLDER PERSONS' ACT 13 OF 2006