

# What to do if your spouse refuses to sign divorce papers...

By [Lesego Mothowamodimo](#)

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There is a common story in the streets and among social circles whereby one person tells another or others that they are still married because their spouse refuses to sign divorce papers and 'release them' or 'let them go'. The sole purpose of this opinion is to debunk this story.



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Consider the following scenario, which I will use to debunk the story that says, "I am still married because my spouse refuses to sign divorce papers": Let's say a man (John) and a woman (Mary) are in a relationship. For argument's sake, let's say that, despite John being in a relationship with Mary, he is also married to a spouse called Jane. As the relationship between John and Mary progresses, John indicates to Mary that he cannot leave Jane as she refuses to sign the divorce papers.

In every ending relationship, such as a marriage coming to an end, there is a person who proposes to end things. In legal terms, the person who proposes to end the marriage and institutes a divorce is the 'plaintiff', while the other party is the 'defendant'. The plaintiff is obliged to start the divorce process through a document called the summons. In simple terms and for this context, the summons is a legal document wherein the plaintiff gives formal notice of the intention to get a divorce to the defendant, further proposing the terms of the divorce in the summons.

In South Africa, there are two (2) kinds of ways to end a marriage through a divorce, and this is through getting an:

- i. uncontested divorce (this means an unopposed divorce) OR a
- ii. contested divorce (this means an opposed divorce).



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## What is an uncontested/unopposed divorce?

- An uncontested divorce comes about when both spouses agree to get a divorce and agree to the terms of the divorce. In an uncontested divorce, the parties must agree on the division of their joint property (if any), the care, access, maintenance and contact arrangements in respect of the minors, dependent children, or any spousal maintenance obligations.
- Generally, in an uncontested divorce, the parties will enter into a settlement agreement to address the division of their property. They will also enter into a parenting rights and responsibilities agreement (commonly known as the parenting plan) to deal with the care, access, maintenance and contact arrangements in respect of the minor or dependent children (if applicable). All agreements reached between the parties in an uncontested divorce must be consensual and voluntary.
- Very rarely can the parties discuss the divorce, agree to get a divorce, and agree to the terms of their divorce before the divorce process starts. When this rare thing occurs, one of the parties will be the plaintiff in the divorce and is obliged to begin the divorce process through the summons as explained above. However, in practice, typically, there is no discussion or even agreement between parties about getting a divorce once the plaintiff has given formal notice of the intention to divorce the defendant, further proposing the divorce terms in the summons and response. After the defendant has received the summons, the parties can either agree or disagree to the divorce terms. A divorce proceeds uncontested when agreements on all terms of the divorce have been reached. If there is a partial agreement/no agreement about the terms of the divorce, then the divorce proceeds as a contested divorce, as explained below.

## What is a contested divorce?

- When the parties getting a divorce cannot agree to the terms of the divorce, the divorce is called a contested divorce. A contested divorce is more complicated, drawn-out, and costly than an uncontested divorce. In most contested divorces, both parties will have attorneys and even advocates to assist them with the legal paperwork. Even when the divorce gets contested, attorneys often arrange a roundtable meeting for settlement discussions. When the parties involved reach a settlement, the divorce course changes and the divorce that started out as 'contested' now becomes 'uncontested'.
- Should settlement not be reached after the pleadings and discovery stages of the divorce (this is where all the parties have complied with the disclosure of all documents to each other) are complete, the plaintiff's attorney will apply for a court date. If the parties cannot reach a settlement, pre-trials conferences and the final trial will follow.



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It is important to note that even though some divorces can start off by being contested, they can eventually get settled as uncontested (unopposed). So effectively, the door to settlement remains open for the parties to explore right until the end, and often what starts as a long and drawn-out fight in a contested divorce can end up being settled amicably if the parties can find each other and agree.

Now let us revisit the story that says, "I can't divorce because my spouse refuses to sign the divorce papers". John divorcing Jane is not dependent on Jane signing the divorce papers. Should John have instituted a divorce and Jane be unwilling to get divorced from John on an uncontested basis, the divorce can proceed on a contested basis.

From the explanations above, it is clear that there is no legal requirement that forces any party to sign papers for a divorce to take place. You can divorce by consensual agreement through an uncontested divorce or a 'fight' called a contested divorce. The only place where a signature would be required would be in the uncontested divorce through the settlement agreement and/or parenting rights and responsibilities agreement, if applicable. So effectively, if your spouse doesn't agree to get an uncontested divorce, you can proceed with a contested divorce.

In conclusion, a divorce is not dependent on another spouse signing divorce papers; effectively, the story that 'I can't get a divorce because my spouse refuses to sign divorce papers' is untrue.

## ABOUT THE AUTHOR

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