

IT NEEDN'T BE MESSY

Divorce: a handy guide to help you through the practical side of ending your marriage

MARTIN DE KOCK



THEY were never an ordinary couple – he was a former Springbok, she a TV presenter and singer. But now that Joost van der Westhuizen and Amor Vittone's marriage is on the rocks they're facing the same problems as any other couple heading to the divorce courts.

Accusations are flying to and fro as they do in just about every split. Joost has confessed to being unfaithful, even though it happened months after a much-talked-about sex video featuring him was leaked. But he recently sued Amor for divorce, apparently because she cheated on him.

Neither is talking about the latest developments. But with allegations of adultery – even though they occurred after Joost had moved out of their home in Dainfern, Johannesburg – and assets to be divided, the divorce could easily become expensive and ugly.

Unfortunately whether it's a celebrity couple or any ordinary Mr and Mrs, most divorces develop into a fight over custody of the children, who should get the house and how much maintenance should be paid.

“When couples decide to di-



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ABOVE: Celebrity couple Joost van der Westhuizen and Amor Vittone's marriage is over – he recently sued for divorce. **ABOVE RIGHT:** On their wedding day nearly eight years ago. **LEFT:** As with most divorces the kids are caught in the middle. Joost now sees less of his kids, Jordan (pictured) and Kylie.

orce the marriage has usually broken down to such an extent almost everything can become a cause for dispute," Cape Town divorce lawyer Peter Baker says. "And children are usually the innocent victims."

A survey by Statistics South Africa confirms this. In 2008, 28 924 couples divorced and almost 27 000 children under 18 were affected. In this case it's Joost and Amor's two children Jordan (6) and Kylie (4).

The celebrity couple would have celebrated their eighth anniversary in December, just a year less than the average nine years before marriages become divorce statistics in SA.

"But we see couples who have been married for shorter as well as much longer periods who want to divorce. Usually it's about a third party but it can also be for financial reasons or simply that they've outgrown each other," Baker says.

Even though there's no single rule for all divorces you can take steps to shorten the painful process and protect yourself.

FIRST make sure you sign an antenuptial contract, Johannesburg divorce mediator Eloise Knoetze says. "Even though you're in love you must think about the future and be practical."

She recommends future spouses consult their own attorney. "Then you can't say later you blindly did what your spouse's lawyer told you to do."

Carefully consider whether you want to be married in or out of community of property. "When you marry in community of property you share everything," Joburg divorce lawyer Elaine Austin says.

"When you marry out of community of property you can marry with or without accrual. Without it you and your spouse's finances remain separate and you can't claim part of the other's pension, for example. With accrual everything you bring into the marriage remains separate but you share everything

from then on."

As far as is known Amor and Joost are married in community of property. As a rugby player and later as a SuperSport presenter Joost's bank account must have been fairly healthy. But it's said he's broke and owes private investigator Mike Bolhuis R700 000. So it remains to be seen whether Amor will get anything out of the divorce.

The first step after you've decided to divorce is to see a lawyer or mediator. "You must agree on how you're going to divide the assets and on custody of the children," Knoetze says.

One party must sue the other party for a divorce, Pretoria lawyer Natasha van Vuuren says. You can ask a lawyer to do this for you. Their fees vary from R700 to R3 000. You can save money by reaching a settlement agreement with your spouse beforehand.

'Even though you're in love you must think about the future and be practical'

"This determines who gets what and how much maintenance should be paid. A mediator can help you with this," Knoetze says.

Things get complicated when one party contests the divorce. "An uncontested divorce can be finalised within a month but a contested one can drag on for 18 months to several years," Van Vuuren warns. Both Joost and Amor's lawyers have indicated they will do everything they can to settle.

A divorce can be granted by a high court or a divorce court. The latter is usually cheaper because an advocate doesn't have to appear on your behalf but it tends to take longer, Baker explains.

An uncontested divorce can cost R6 000 to R10 000, while a contested one costs at least R50 000. "An average cost is between R200 000 and R300 000," Van Vuuren says.

But a drawn-out case of three years or longer can run to millions, Baker adds.

If couples agree on the division of assets an online service that costs about R1 000 can be used. But Baker advises people to go to a lawyer for at least one session, when everything will be explained to them.

Even if your spouse has had an affair he or she isn't automatically entitled to less. "You can argue you have the right to more of your spouse's assets if he or she has had an affair but that's for the court to decide," Baker says.

"You can sue the third party for the breakdown of your marriage but then you must be able to show there were no other contributing factors – and that's always difficult," he says.

In the Van der Westhuizen's case Joost will have to prove Amor had an affair and that this

is free and an interim order can be granted the same day. A court date is then set when the other party can oppose it.

You can also apply for an interim maintenance and custody order, known as a Rule 43. But that can cost between R15 000 and R25 000 because it has to be granted by the High Court. In a divorce court it's called a Rule 32 and costs less.

As far as is known the Van der Westhuisen haven't asked the court for a Rule 43. But apparently Joost can no longer visit the children as freely as he did before. Until recently he fetched them from school but now he sees them for only an hour or so a day.

SADLY children are always caught in the middle of a divorce. "When parents divorce the child's entire world is ripped apart because a child's security is a dad and mom who are together," Truida Botha, a child psychologist of Fairlands, Johannesburg, says.

All the same it's better for parents to divorce than raise a child in a loveless and dysfunctional marriage, she says. When parents deadlock over custody a forensic psychologist or forensic social worker assesses the family in conjunction with the family advocate.

The court takes various factors into account before deciding in whose primary care the children will be placed. Because Amor often performs in the evenings Joost's legal representative could argue the children will be better off with him.

"Factors such as alcohol and drug abuse, income, whether you're at home during the day are also taken into consideration," Baker says.

But whether it's a celebrity couple's family that's being ripped apart or the family next door's, it's still heartbreaking – especially for the children. □

is what finally led to the breakdown of their marriage. He apparently found correspondence between her and a man she recently met while on holiday in Canada. Amor denies the allegations (YOU, 19 August).

To prove an affair won't be easy because Joost was the first to commit adultery and he'd moved out of the marital home when Amor went on holiday to Canada.

Even if your spouse moves out he or she can still lay claim to the house, depending on whether you're married in or out of community of property.

Amor obtained a protection order against Joost, apparently among other reasons to prevent him portraying her in a poor light.

Should your estranged spouse emotionally harass you, you can apply for a protection order at your nearest magistrate's court.



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