



Muslim Family Law Hub

Strengthening families. Enriching communities.

Checklist for Islamic Divorce in South Africa

Understand Types of Islamic Divorce:

- Familiarize yourself with Talaq (husband-initiated divorce)
- Learn about Faskh (judicial divorce)
- Understand khula' (wife-initiated divorce with compensation)
- Know the difference between revocable and irrevocable divorces.

Initiate Divorce Proceedings:

- For Talaq: Ensure husband pronounces divorce in a clear, unambiguous manner
- For Faskh: File an application with a recognized ulema body or Islamic scholar
- For Khula': Negotiate terms with spouse or through an ulema body.

Understand Grounds for Faskh:

- Familiarize yourself with valid grounds for judicial divorce
- Gather evidence to support your case if seeking Faskh.

Observe Iddah (Waiting Period):

- Understand the duration of Iddah based on your situation
- Know your rights and responsibilities during Iddah
- Determine if reconciliation is possible during this period
- Understand restrictions on remarriage during Iddah
- Know your rights regarding accommodation during Iddah



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Financial Considerations:

- Claim any unpaid or deferred mahr (dower)
- Understand your right to maintenance during Iddah
- Consider claiming arrear maintenance (up to 3 years in SA law)
- Discuss division of assets based on Islamic and SA law.

Child Custody and Maintenance:

- Understand Islamic principles of child custody (hadhanah) but very importantly know that the South African law principle of the "best interest of the child" has to govern all decision regarding minor children
- Discuss and try to agree on child maintenance contributions by each parent.

Legal Documentation:

- Obtain a Talāq certificate from an ulema body
- Consider obtaining a civil divorce even if you do not have a civil marriage.

Seek Professional Help:

- Consult with an Islamic scholar familiar with South African law
- Consider engaging a family law attorney
- Seek mediation services if available

Address Specific Islamic Divorce Issues:

- Understand the concept of mu'tah (consolatory gift)
- Decide if you will claim arrears maintenance.

Consider South African Legal Context:

- Know your rights under the Divorce Act and the Divorce Amendment Act of 2024
- Make sure you have an original copy of your marriage certificate



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Emotional and Spiritual Support:

- Seek counselling or support groups
- Engage in spiritual practices for emotional healing.

Future Planning:

- Update your will and beneficiary designations
- Consider implications on future marriages (e.g., after triple Talāq).

Document Everything:

- Keep records of all communications regarding the divorce
- Maintain copies of all legal and religious documents

Navigate Polygynous Marriages:

- Understand how divorce affects co-wives and their children
- Consider implications on inheritance and asset division

Address Potential Complications:

- Understand implications of pregnancy on divorce proceedings
- Know how to handle disputes about the occurrence or validity of divorce.