

DIVORCE PROCEDURE

The mechanics of obtaining a divorce nowadays are usually quite straightforward – particularly if the couple agree that the marriage is over.

The difficulties tend to lie rather in resolving the related practical issues stemming from the divorce such as how to separate, where to live, arrangements for the children and any money matters.

Your attention will probably be concentrated on those related issues and the process of actually obtaining the divorce may seem blurred. The purpose of this leaflet is to outline the framework of the divorce process, to highlight the key points and to set out the sort of timetable to expect.

1. Who can start Divorce Proceedings?

Anyone who has been married for over a year can start divorce proceedings in an English County Court provided he or she is either “domiciled” in England or Wales or has been resident in England or Wales during the preceding year. It does not matter where the couple were married. You will need an original marriage certificate which will be retained by the Court.

2. On What Grounds can a Divorce Petition be Started?

The only ground for divorce is that the marriage has irretrievably broken down, but there is a complication. A divorce will only be granted if one of the five facts laid down by law providing irretrievable breakdown is established.

3. What are the “Facts”?

- a) Your spouse has committed adultery and you find it intolerable to continue living together.
- b) Your spouse has behaved in such a way that it would be unreasonable to expect you to continue living together.
- c) Your spouse has deserted you for a continuous period of 2 years or more.
- d) You and your spouse have been living separately for 2 years or more and your spouse agrees to a divorce.
- e) You and your spouse have been living separately for 5 years or more, whether or not your spouse consents to the divorce.

4. If the Marriage has “irretrievably broken down” and one of the 5 Facts apply what happens next?

This will depend on your particular circumstances. It is often sensible to try to obtain your spouses consent to the Petition in advance and to try to reach agreement over the contents of the Petition (the Petition is the document that starts the divorce). For example if your

spouse accepts that the Petition should be based on unreasonable behaviour only a brief outline of the particular behaviour may need to be given. Not saying all that might need to be said will not generally prejudice you.

5. What does the Petition actually look like?

Every Petition follows the same form. It contains basic information about names, addresses, ages of children and a statement that the marriage has irretrievably broken down. It will state the “fact” on which it is intended to rely.

The Petition will include a section (known as a “prayer”) which will include a request for the divorce to be granted. It may also include a request for a Court Order relating to any children, a claim regarding the legal costs of the divorce itself and an application for financial provision. This is in standard terms. The section regarding financial provision lists all the types of claims that can be made but they do not necessarily have to be made in all cases. The inclusion of this section is vital even if financial matters are agreed.

6. What about the children?

A form is sent to the Court with the divorce Petition which will outline the arrangements relating to any children. The Court encourages couples to agree those arrangements. The form (known as a “Statement of Arrangements”) is usually completed by the person filing the Petition. Preferably it should be sent to the other spouse before it is filed with the Court. If agreement is not reached this does NOT prevent the divorce from proceeding. The Court will then have the power to make decisions about what is in the best interests of any children. The Statement of Arrangements only sets out the opinion and proposals of one party unless it is agreed in advance by both parties.

7. How much does the divorce cost?

This depends on the finances of each party to the divorce. Those who are unemployed or on a low income may be eligible for advice under the Legal Aid Scheme. This means the state would pay the solicitor’s charges although these may have to be repaid. We charge an hourly rate and there are also Court fees that have to be paid.

8. How long will the divorce take?

If the divorce is not contested by your spouse it will take about a minimum of five months although there may be good reasons to delay the divorce being made final by what is called the Decree Absolute. Delays may also be caused for other reasons. We will conduct the divorce for you at the speed you wish subject to any delays caused by the Court process or your spouse.

9. Are the issues dealt with before the divorce is finalised?

The divorce (called the “divorce suit”) is treated separately from financial matters and the arrangements for any children. It is not necessary for financial arrangements to be completed by the time the divorce is made final although it may be advisable depending upon your circumstances to delay the Decree Absolute until all financial matters are resolved. Frequently they will still be in the early stages if finances are complicated even if the divorce suit has progressed. However, it should be possible to resolve the immediate problems to make temporary maintenance arrangements. With all aspects it is important to try to reach agreement with your spouse as soon as possible to avoid contested proceedings where larger legal costs would be incurred.

10. Are the Proceedings Public?

Court proceedings in family law are usually private. This means that the public and press are not allowed access to the Court papers. However, the press are able to publish that a divorce has been pronounced. The information that they may disclose is very limited. They may disclose the “fact” of the divorce but they are not able to publish details of the adultery or unreasonable behaviour.

11. Can I Stop the Divorce?

Yes. Once you have started the divorce you can stop it until the Decree Absolute ending your marriage is granted. It is harder for you to stop the divorce if it is your spouse that has started the divorce as he or she would generally be in control of the divorce and the speed in pursuing it.

12. Are there other Options?

If you do not consider your marriage has finally ended you may need to consider seeking counselling to achieve reconciliation. Even if a divorce does take place you may find the use of mediation or conciliation helpful to help you reach agreement with your spouse on any aspects that are disputed. We can explain this to you if you wish.

Instead of seeking a divorce you could seek an order for Judicial Separation which in many ways is similar to a divorce but you remain married.

13. Should I make a Will?

Yes. This is very important but remember if you re-marry then your will is automatically revoked and you will have to make a new one. We recommend you make a will immediately and this should be reviewed after the divorce is concluded.

This information is intended for general guidance only and should not be relied upon without detailed legal advice on your specific circumstances, which we will be pleased to provide.

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