



DIVORCE PROCEDURE

The period following the breakdown of a marriage can be a very difficult time for both parties. In addition to the emotional stress experienced as a result of the separation, the legal procedure can often seem complicated and confusing.

We have produced this leaflet to help you to understand the procedure and you may wish to refer to it as the case progresses. Please do not hesitate to contact us at any time should you have any further queries.

LEGAL TERMS USED IN CONNECTION WITH A DIVORCE

These are some of the most common terms that you may hear:-

“Petitioner” The formal document, which sets out the claim for a divorce and the background to the claim.

“Petitioner” The person who starts the divorce by filing a Divorce Petition with the Court.

“Respondent” The other party on whom the Divorce Petition is served.

“Statement of Arrangements for Children”

A formal document setting out the proposed arrangements for any children in the family.

“Decree Nisi” There are two Decrees made during the course of the divorce procedure. This is the first and means that the Court is satisfied that your divorce can proceed to the next stage. Following Decree Nisi, you must wait six weeks before the final Decree can be pronounced. At this stage, you are not free to re-marry. Any legal objections to the divorce may be raised during this period.

“Decree Absolute” The second and final Decree. Once this has been pronounced, you are divorced and thereafter will be free to re-marry.

“Injunction” A Court Order usually made to prevent one party from doing something e.g. being violent towards the other party/children/selling off matrimonial assets.

THE PROCEDURE

Where there are children to consider, we will normally try to agree on the arrangements for them prior to issuing a Petition for divorce. However, if that does not prove possible, the arrangements may have to be decided by the Court at a later stage.

The Petitioner's solicitor prepares a divorce petition and statement of arrangements, which are sent to the Court. The Petition must state that the marriage has irretrievably broken down by providing evidence that one of the following reasons apply:-

1. That the other party has committed adultery;
2. That the other party has behaved in a way that is unreasonable;
3. That the parties have lived apart for at least two years and they both agree to a divorce.
4. One party has deserted the other for at least two years;
5. The parties have lived apart for at least five years.

The Court sends copies of the papers to the Respondent together with a form called the "Acknowledgement of Service" which the Respondent must fill in and return to the Court. If the Respondent decides to defend the divorce, he/she can say so on that form.

The Court will send a copy of the form to the petitioner's solicitors. If the Respondent has decided not to defend the divorce, the Petitioner's solicitors can prepare the necessary documents required to progress the matter. The Petitioner must swear an Affidavit (sworn statement), which verifies the contents of the divorce petition. This is sent to the Court and at this stage, the Court will decide whether the divorce can go ahead.

If approved, the Court sets a date for the pronouncement of the Decree Nisi. You would not normally be required to attend Court, but occasionally, the Court may ask you to attend, for example, to provide further details regarding the arrangements for the children.

Six weeks after the Decree Nisi has been pronounced, the Petitioner may apply for the Decree Absolute. There is no need to attend at Court. If the Petitioner does not apply, the Respondent must wait three months after the expiry of the six-week period when he/she can make an application for the Decree Absolute. This will involve a brief informal Court hearing.

QUESTIONS COMMONLY ASKED

How much will it cost?

There is no standard fee for divorce. Our charges will be based on the time which we spend in pursuing the matter. During your first appointment, we will outline the likely

issues with you and, having discussed them, we hope to be able to give a more definite indication of the likely cost.

How long will it take?

It is not possible to be precise and will depend on the speed with which the parties to the divorce themselves respond and how quickly the Court can process the paperwork. Where all parties co-operate and the matter proceeds smoothly, you should allow for a period of four to six months. Any difficulties or objections will of course cause delay.

What if the Respondent does not return the Acknowledgement of Service?

The Petitioner must prove that the Respondent has had the papers. It may be possible to prove this by providing evidence to the Court such as details of any discussions about the papers, or by getting the court bailiff to serve a further set personally on the Respondent.

What happens if I want to change my mind?

You can always ask for the matter to be put on hold whilst you re-consider the position. If you decide to stop the divorce altogether you can do so at any time before Decree

Absolute. You would need the Court's approval to withdraw the matter but this will normally be granted if both parties agree to stop the proceedings.

What if an attempt at reconciliation fails?

You may live together for up to six months (at once or in separate periods) whilst attempting a reconciliation, without affecting the divorce. If you live together for longer than that, you would have to update your Petition to show that one of the five reasons applied afresh to show your marriage has broken down.

Are there any other matters to Consider?

1. You should consider severing all joint financial liabilities and accounts to make sure that you do not lose out or become liable for any further debts without your express consent.
2. You should consider making a will. Once your decree absolute is pronounced, you lose your automatic entitlement to inherit property from your former spouse, whether he/she has made a will or not. You should also remember that if you intend to re-marry, any will you make before re-marriage will be automatically revoked on re-marriage.

The information in this article is intended for general guidance only. It provides useful information in a concise form and is not a substitute for obtaining legal advice. If you would like advice specific to your circumstances please contact us.