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A Guide to Divorce

Sadly, divorce statistics show that about one in three marriages in the UK breakdown. When a marriage breaks down the parties must go through a legal process to end it. A marriage can be ended by a Decree of Divorce or Nullity. Alternatively, some people wish to remain married but to officially live apart and so apply for a Decree of Judicial Separation.

Grounds for Divorce

In England and Wales there is only one ground for divorce, and this is that the marriage has broken down irretrievably, and, there is no prospect of a reconciliation. The person who starts the divorce proceedings is called the “Petitioner” and the other party is called the “Respondent”.

A Petitioner must prove that the marriage has broken down irretrievably by relying on one of the five facts.

The five facts are:

- That the Respondent has committed adultery; or
- That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him or her. This ground is generally referred to a “unreasonable behaviour”; or
- That the Respondent has deserted the Petitioner for at least two years prior to the petition being issued; or
- That the Petitioner and Respondent have lived separate and apart for at least two years and they both agree to the divorce; or
- That the Petitioner and Respondent have lived apart for at least five years.

Getting a Divorce

If you want to get a divorce, you’ll first need to present a Divorce Petition to your local County Court. It is recommended that you consult with a specialist Family Law Solicitor who will draw up the necessary documents for you to start the divorce proceedings. The main document is called the Petition. It sets out the reason why you are seeking a divorce.

If you have any children under the age of 18, then a Statement of Arrangements form will also need to be prepared. This sets out the details of where the children are to live and who is to look after them as the court needs to be satisfied that the arrangements that have been made for the children are appropriate, in the circumstances.

The Petition and Statement of Arrangements for Children, if appropriate, will then be filed at the Court together with your Marriage Certificate and the court fee.

The court will then send the Respondent a copy of the Petition, the Statement of Arrangements form and an Acknowledgment of Service form. The Respondent will need to complete the Acknowledgment of Service form indicating whether he or she wants to defend the divorce, and, if they agree with the Statement of Arrangements. The document is then sent back to the same court.

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Once the court receives the Acknowledgment of Service a copy will be sent to your solicitor by the court. (If the Respondent has indicated an intention to defend the Petition a different legal procedure applies. Your solicitor will then advise you of the available options.)

Affidavit in Support of Petition

Once the Acknowledgement of Service form has been to your solicitor by the court, your solicitor will then prepare a Request for Directions for Trial form and an Affidavit in Support of the Petition. This latter document is a sworn statement confirming that the information you have given in the Petition is true and it identifies the Respondent's signature on the Acknowledgment of Service form.

All the paperwork then goes before a District Judge to consider whether a divorce should be granted and to consider the arrangements proposed for any children.

Decree Nisi

The Decree Nisi is the provisional divorce order. You will remain married until the Decree Nisi has been made 'absolute'.

The District Judge will look at the documents before him or her and will approve the contents if all is in order. A court date will then be set to confirm that you have established the grounds for divorce and the court is satisfied that the marriage is broken down irretrievably. The court will issue a Certificate of Entitlement to a decree confirming these details. Neither you, nor the Respondent, are expected to attend court for the pronouncement of the Decree Nisi, unless there is a dispute over payment of court fees.

Decree Absolute

Once you have received the Decree Nisi, you must wait for 6 weeks before applying for the Decree Absolute, by sending another application form to the Court together with a further Court fee. The Decree Absolute legally ends the marriage.

The Decree Absolute is an important legal document and should be kept in a secure place. It can affect any Will made prior to its pronouncement and you should consider making a revised or a new Will. Secondly, the parties are free to remarry.

How Long Does It All Take?

It usually takes about five months to obtain a straightforward divorce (i.e. where the divorce is not defended by your spouse and the facts are clear cut) – and, even then, this depends on how quickly each party returns the various forms to the Court and on how busy the Court is.

To discuss the procedure and costs further please contact this office.

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Financial & Property Matters

It is always advisable to try and reach a financial settlement with your spouse on a voluntary and amicable basis. If you can talk things through and reach an agreement, you will save yourselves time and money that otherwise may have to be used to argue about it in court.

If you and your spouse are able to reach an agreement, then Fairbrother & Darlow can prepare a formal document embodying the terms of the agreement. This can be by way of a Deed of Separation, which does not go to court, or in the form of an order that can be sent for the approval of a judge within divorce proceedings.

If you are not able to reach an agreement, then you may have to start proceedings where the court will order both parties to provide 'full and frank disclosure' of their financial circumstances. We can then help you to explore with the possibility of a settlement that provides financial security for both parties and, if applicable, any children.

If an application is made to a court, the legal factors a judge considers to decide what is fair are set out in legislation and include:

- The parties' incomes, earning capacities and mortgage capacities;
- The parties' financial needs, obligations and responsibilities;
- The parties' standard of living;
- The parties' ages and duration of the marriage;
- Any physical or mental disability that a party may have;
- The parties' respective contributions to the marriage;
- Occasionally the court may take into account the parties' conduct;
- Any loss of benefit, whether financial or otherwise, that may arise from the divorce proceedings;
- The welfare of any child(ren) of the marriage.

Nullity and Judicial Separation

There are particular rules that are applicable in proceedings for a Decree of Nullity or Judicial Separation. If you would like to have further advice in connection with these matters please contact Fairbrother & Darlow.