

## Divorce: What's it all about?

The purpose of this fact sheet to advise you on the law relating to divorce proceedings generally and the legal and practical consequences of the divorce process. Please read through the contents of this letter careful as it contains much information which is relevant to you and which will not be repeated in any future correspondence.

The mechanics of obtaining a divorce these days are usually quite straightforward - especially if both parties feel that the marriage is over. The difficulties tend to lie in resolving related practical issues stemming from divorce such as how to separate, where to live, arrangements for the children and money matters generally

We shall briefly try to explain the process clearly to you as things move along. This guide is intended briefly to explain the process in everyday terms so that you understand the 'framework' of a divorce. Of course this can only be a general explanation and we shall be happy to explain any points, which arise, as they occur.

Please note that there is an absolute bar on filing Divorce proceedings within 12 months of the date of the marriage. In other words, you have to be married for a whole year, before proceedings can be commenced.

### 1. What do these words mean?

'PETITIONER'	the person applying for a Divorce
'RESPONDENT'	the other spouse
'CO-RESPONDENT'	another person who is involved in the proceedings i.e. the person with whom the Respondent is committing adultery
'FINANCIAL REMEDY'	the financial side of the Divorce
'DECREE NISI'	a Court Order stating that you are entitled to a divorce on the grounds stated in your Petition
'DECREE ABSOLUTE'	the Court Order which ends you marriage

### 2. What is the ground for a divorce?

The ground is irretrievable breakdown of marriage and it can only be proved by establishing one of five facts set out in an Act of Parliament. The two facts which enable you to apply for a divorce immediately are 'adultery' or 'behaviour' (commonly referred to as Unreasonable Behaviour) by your spouse. The other facts all require at least two years separation. A divorce can only be obtained by consent where a couple has lived separately and independently from one another (usually in separate households) for at least two years. The other facts are desertion and 5 years separation (with or without consent).

### **3. What are the stages in the divorce process?**

#### **STAGE 1**

One spouse (the Petitioner) applies for a divorce on the basis of one of the five facts outlined above. The application (Divorce Petition) is sent to the Court.

If your Petition is based on behavior, it is preferable to try to agree the contents of the Petition with your spouse and this will usually be done by your Solicitor unless there are exceptional circumstances.

#### **STAGE 2**

The other spouse (Respondent) is sent a copy of the Divorce papers, together with a form called the 'Acknowledgement of Service', by the Court. He/she has to notify the Court within seven days of receiving the papers if he/she intends to defend the divorce. Before the Divorce can continue it must be shown to the Court that the Respondent has received the Petition.

If he/she has not sent an Acknowledgement to the Court then a Bailiff or Enquiry Agent (also known as a Process Server) will try to serve the papers on him/her personally. If this is unsuccessful then further Court Directions will be required.

If the Respondent intends to defend the Divorce, he/she must send his defence ("the answer") to the Court within 4 weeks after receiving the petition. If this is done then the Divorce becomes defended and the procedure set out below does not apply. Defended divorce proceedings actually resulting in a full Court case are very rare but in such cases delay is inevitable.

Once proof of service (proof that the Respondent has received the divorce papers) is available, the Petitioner signs a Statement in Support of Petition confirming that the contents of the Petition are true and asking for the Decree Nisi to be granted.

#### **STAGE 3**

A Judge considers the divorce papers and the Statement. If (s)he is satisfied with the contents of the Petition, and the Statement in Support of Petition then (s)he will grant a 'Certificate of Entitlement to a Decree'. The Certificate will state that the Judge is satisfied that the Petitioner has proved the contents of his/her Petition and will give the date upon which the Decree Nisi will be granted and any other Orders (for example an Order for Costs) will be considered. Although a hearing will be listed for that date, there is no need for either party to attend Court if the proceedings are unopposed.

The Court then sends a copy of the Decree Nisi and any other orders to both the Petitioner and the Respondent.

## **STAGE 4**

Six weeks and one day after the Decree Nisi has been granted, the Petitioner is entitled to apply for the Decree Nisi to be made Absolute. However, in the majority of cases the Petitioner's Solicitor will delay the Application for Decree Absolute until money matters have been sorted out.

The Petitioner's application for Decree Absolute is usually granted on the day that it is received by the Court, unless it has been more than a year since the Decree Nisi was granted, in which case the Petitioner must give the Court some additional information and the application must go before a Judge for consideration. This usually takes less than a week.

If the Petitioner does not apply for Decree Absolute then the Respondent can do so, not less than 3 months, six weeks and one day after the Decree Nisi has been granted.

However, the Respondent's application for Decree Absolute must be made on Notice to the Petitioner (the Petitioner must be informed about the Application) so that he/she has the opportunity to object and it usually results in a hearing being listed.

### **4. Will I have to go to Court?**

The process described above is often referred to as 'the special procedure'. Under this system it is only necessary to attend Court for a hearing if there is a dispute about arrangements for the Children or in relation to the costs of the Divorce.

Otherwise, it is not usually necessary to attend Court in connection provided the divorce remains undefended.

If the divorce is defended or, in exceptional circumstances, if the Court directs that this special procedure cannot be used, then Court hearings will be necessary. This is very rare.

### **5. How long will the divorce take?**

This really depends upon how quickly both parties return their forms and how busy the Court is. If both spouses respond promptly and the divorce is undefended then the divorce will usually take between four and six months.

### **6. Do I have to pay court fees for the divorce?**

A court fee is payable when the divorce proceedings are started. That fee is currently £410. However, people who are on income support or a low income can make an application for exemption from the Court fees.

## **7. Can I stop the divorce once it has started?**

Yes. We appreciate that people sometimes feel that they have been too hasty in applying for a Divorce. It is important that you are sure that you want to go ahead with the Divorce before your marriage is ended by the Decree Absolute. If you want to stop or delay the proceedings, please let us know. Please do not feel you are letting us down by doing so. We represent you.

## **8. What is judicial separation?**

Unlike Divorce proceedings, there is no restriction on when a Petition for judicial separation can be presented. If one of the facts (which are the same as for divorce proceedings) can be made out, a Petition can be presented the day after the wedding.

A Decree of Judicial Separation is a Court order recording that you are legally separated. The grounds and procedure are virtually the same as divorce although there is only one Decree - a Decree of Judicial Separation. A Decree of separation does not terminate the marriage but it does have the following important consequences:-

- i. The Petitioner is no longer bound to cohabit with the Respondent.
- ii. If either party dies without making a Will, his or her property devolves as if the other party to the marriage is dead. However, Wills are unaffected by Judicial Separation and therefore a new Will should be made if you do not wish for your spouse to benefit from your Will after Judicial Separation.
- iii. The Court can make a Financial Remedy Order as to finances and property but cannot make Pensions Orders in proceedings for a Decree of Judicial Separation or at any time thereafter.

The Parties are free to petition for Divorce even after they have been granted a decree of judicial separation.

## **9. When are financial matters dealt with?**

The Divorce Petition will usually include a list of financial Orders, which the Court can make. These are collectively called 'Financial Remedy Orders' and they appear in the Prayer of the Petition. This does not mean that all of these Court powers will be used, but they can be if necessary and relevant to your particular financial circumstances.

Financial matters are usually dealt with alongside the Divorce proceedings and can sometimes hold up the application for the Decree Absolute to finalise the Divorce.

Further, general information can be found in our fact sheets entitled 'Divorce and Matrimonial Finances' and 'Pensions and Divorce'.

**10. Does the divorce have to be bitter?**

We hope not. Family Law is different to other areas of law (particularly where children are involved) and it is preferable to retain an amicable relationship. Unfortunately, this will depend on the approach taken by you and your spouse but we will try to make sure that our actions do not increase the emotional temperature. Both of the Partners in this firm are members of Resolution and are committed to dealing with cases in a non-confrontational manner.

We will, however, make sure that you receive thorough advice and that your interests are protected throughout.

**11. Should I make or change my Will?**

You should certainly give this some thought. If you have made a Will in favour of your spouse then it will remain valid until you change it (although some changes are assumed once you are actually Divorced). If you have not made a Will then your spouse will automatically inherit from your estate in accordance with the Rules of Intestacy at the time until you are Divorced or a Decree of Judicial Separation is granted.

We have tried to give you a brief outline of the procedures involved during a Divorce. We are sure that there will be areas, which you may want to discuss in more detail. Please do not be afraid to ask us to explain any points, which you do not understand.