



FAMILY LAW GUIDE

DIVORCE AND SEPARATION

Unfortunately it is a fact of life that not all marriages are successful and either one or both parties may seek to dissolve the marriage or to obtain a formal decree of judicial separation.

If there are children of the family who are under the age of 18 years then the Court must satisfy itself that the parties have put proper arrangements into place for their welfare, education, living arrangements and contact with the absent parent.

A fair and equitable division of the family assets must be resolved between the parties. The assets will include jointly owned assets, assets in the sole names of the respective parties and assets owned jointly with a third party. Businesses and inheritances will also be taken into consideration in the final settlement of financial matters.

An agreement can be reached by the parties by way of negotiation, the emphasis here being to avoid conflict and confrontation. However if this fails, then either party can issue a formal application to the Court within the proceedings for the Court to determine how the assets are to be divided.

It is always wise to consult a specialist Family Solicitor about the breakdown of your marriage because there can be complicating factors which may arise upon the issue of proceedings.

When can a party apply for a divorce?

- III You must have been married for one year or more;
- III Either you or your spouse must have been resident in the country on a permanent basis for at least one year before the proceedings commence;
- III The marriage must have 'irretrievably broken down' as a result of one of the following reasons:
 1. Your spouse has committed adultery and you find it intolerable to live together; **OR**
 2. Your spouse has behaved in such a way that you cannot reasonably be expected to live together; **OR**
 3. Your spouse has deserted you for a continuous period of two years or more; **OR**
 4. You and your spouse have lived apart for a continuous period of at least two years **AND** your spouse consents to the divorce; **OR**
 5. You and your spouse have lived apart for a continuous period of at least five years. In this instance the consent of your spouse is not required.

How can a party obtain a divorce?

(a) As Petitioner

If you are the party applying for the divorce you are named as the Petitioner. Your

spouse will be named as the Respondent. As the Petitioner you will take the following steps to dissolve the marriage:

- III You first need to be satisfied that the marriage has irretrievably broken down and second that you have grounds for divorce on one of the reasons set out above.
- III The divorce documents are then prepared and lodged with the County Court.
- III The County Court will process the documents and serve them, by post, on your spouse together with an Acknowledgement of Service. Your spouse is required to complete the Acknowledgement of Service and return it to the County Court. If your spouse fails to do so then there are a number of other options available for service of the divorce papers which your Solicitor will discuss with you.
- III The County Court will send you a copy of the Acknowledgement of Service as soon as they receive it from your spouse. If your spouse is not contesting the divorce then you will now be in a position to apply for the decree nisi. This is achieved by completing and being sworn to a Special Procedure Affidavit and lodging this with the Court together with a form called Request for Directions for Trial.
- III These documents are placed before a

District Judge and if he is satisfied that you are entitled to a decree nisi on the grounds pleaded in your petition then your case will be listed for pronouncement of decree nisi. This will be pronounced in your absence and there is no need for you to attend Court, although you will be advised of the date.

- III Six weeks after pronouncement of the decree nisi you are entitled to apply for the decree absolute. The decree absolute is the document which finally dissolves the marriage. Where there are associated financial matters (also known as Ancillary Relief) it may be the case that you will be advised not to apply for decree absolute until those matters have been finalised.

(b) As Respondent

- III You will receive from the County Court a copy of the divorce documents and the Acknowledgement of Service.
- III You will then complete and sign the Acknowledgement of Service. You will also have to indicate on the form whether it is your intention to allow the petition to proceed undefended or whether you wish to defend or cross petition.
- III It is highly unusual in this day and age for a defence or cross petition to be lodged; if you do elect for this course of action then you should consult a Solicitor before doing so because of the complexities involved.
- III If you agree to allow the divorce to proceed undefended then your spouse, as the Petitioner, will apply for the decree nisi as soon as the Acknowledgement of Service is received.
- III Your spouse, as the Petitioner is entitled to apply for the decree absolute six

weeks after the date of pronouncement of the decree nisi. If your spouse fails to do so then you as the Respondent can make an application for the decree absolute three months after the date on which your spouse could have done so.

Divorce Costs

If you are the Petitioner in divorce proceedings you are entitled to make a claim for the costs of the divorce against your spouse. If your spouse objects to paying costs the Court may deal with the legal arguments on the question of costs on the date of pronouncement of the decree nisi. In these circumstances, whether you are the Petitioner or the Respondent, you will have to attend Court. The Court may however direct that the question of costs is dealt with at a directions appointment instead of the date of pronouncement of the decree nisi. There is no guarantee that the Court will make an order for costs in favour of the Petitioner. This will be solely dependent on the circumstances of the case.

What happens if a party wishes to separate but they have not been married for one year OR even after having been married for one year they do not wish to dissolve the marriage?

In circumstances like this you can issue proceedings for a decree of Judicial Separation. The process is the same as for divorce proceedings but instead of being granted a decree absolute of divorce you will instead be granted a decree of judicial separation. If you opt for this route then you do not have to show that the marriage has 'irretrievably broken down'. Where a decree of Judicial Separation is pronounced the marriage is not ended and therefore neither party is free to remarry. This course of action is the exception rather than the norm

and is usually only considered on either religious or financial grounds. It is important to note that upon the granting of a decree of judicial separation, if your spouse has not made a Will bequeathing assets to you, then you will no longer automatically inherit upon the death of your spouse.

How long does the divorce process take?

Unfortunately there is no set time frame. Each case is different and will depend on any complexities or difficulties encountered. However as a general rule of thumb a straightforward divorce without complications and without issues relating to children or finances should take between six to eight months.

Alternatives to divorce

Although it is a rare procedure it may be possible, depending on the circumstances, to obtain a decree of Nullity. A decree of Nullity is not often granted but your Solicitor will be able to advise you whether this is an appropriate course of action in your case.

This Guide contains summaries of complicated issues and should not be relied upon in relation to specific matters. You are advised to take legal advice on particular problems.

For further assistance or information please contact: Mary Kaye, Partner & Head of the Family Law Team on T: 0870 763 1687 or E: mary.kaye@martineau-uk.com

