

Clarity Family Law Solicitors

INFORMATION ON DIVORCE PROCEDURE

These notes are intended to give you a very general idea of what is involved in obtaining a divorce.

1. **Grounds for Divorce**

There is only one ground for divorce and that is that the marriage has broken down irretrievably. The person who starts the divorce proceedings is known as 'the Petitioner' and their spouse is called 'the Respondent'. Proceedings for a divorce cannot be started until the parties have been married for at least one year.

To satisfy the court that there has been an irretrievable breakdown the Petitioner must prove one of the following five facts:

- (a) The Respondent has committed adultery and the Petitioner finds it intolerable to live with the respondent.
- (b) The Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. This fact is commonly known as "unreasonable behaviour".
- (c) The Respondent has deserted the Petitioner for a continuous period of at least two years immediately before the start of the divorce.
- (d) You have lived apart for a continuous period of at least two years immediately before the start of the divorce and the Respondent consents to a decree being granted.
- (e) You have lived apart for a continuous period of at least five years immediately before the start of the divorce.

Most divorces are based on facts (a) 'adultery' or (b) 'behaviour'. 'Adultery' is an act of sexual intercourse with a person of the opposite sex. To be able to rely on this in the divorce the adultery must have happened in the six months before separation or at any time after separation. There is no need to name the person with whom the adultery took place or to involve them in the court proceedings and indeed it may delay or complicate the divorce proceedings if a "Co-Respondent" is named.

The test for 'behaviour' is subjective and it does not need to consist of extensive violence, drug or alcohol addiction or other extreme behaviour. A combination of less obvious behaviour can be sufficient. Often issues like working too much (or not working enough), showing too much (or too little) affection, combined with a number of other similar factors are used.

2. **Separation**

If you would prefer to regularise your separation without actually divorcing there are two options available:-

1. Judicial separation;
2. Separation agreement.

2.1 **Judicial separation**

This involves a court procedure which is virtually identical to that which applies to a divorce. The essential difference is that the court pronounces a decree of judicial separation rather than a divorce and therefore you and your spouse would remain married. The main reason people choose judicial separation over divorce is for religious reasons or if valuable pension benefits are lost on divorce. However, since the court can now share pensions, this is no longer so important.

2.2 **Separation agreement**

Many couples prefer to reach an agreement about financial matters arising out of their separation without involving the court at all. The way this can be achieved is for them to sign a written document which incorporates the agreement they have reached. Commonly, such agreements deal with confirmation that the parties to the marriage are to live apart and the manner in which any maintenance and property issues are to be dealt with. Whilst there are no restrictions on what can or cannot be included in such an agreement, it is important to bear in mind that if either person makes a subsequent financial application to the court, the court is not bound by the financial arrangements in the separation agreement.

3. **Divorce Petition**

Divorce proceedings are started by the Petitioner issuing a Petition which sets out basic details of the marriage, the parties and any children. The Petition also sets out the facts on which the Petitioner is relying to establish that the marriage has broken down irretrievably. The Petition will include a request for the marriage to be dissolved and can also include requests for all of the financial claims which are available (e.g. maintenance etc.). If the Petition includes a request for financial claim(s), it does not necessarily mean that these claims will be pursued by the Petitioner.

4. **Filing the Petition**

Once the Petition has been approved and signed by the Petitioner, it is sent to the Court (together with other documents required) and the Court fee which is currently £550. Once the Court office staff have processed the Petition, it will be sent to the Respondent, together with an Acknowledgement of Service form.

5. **Acknowledgement of Service**

The Respondent should complete the Acknowledgement of Service form indicating whether he/she wants to defend the divorce and return it to the Court within 14 days. If the Respondent does not return the form, it may eventually be necessary to arrange for another set of the documents to be served on him/her, unless it can be proved in some other way that he/she has

received the Petition and accompanying documents from the Court. This may for example be done by a process server giving it to him/her personally.

6. **Decree Nisi**

Once the Court receives the completed Acknowledgement of Service form it will stamp it and send a copy to the Petitioner. The Petitioner can then apply for the conditional divorce order, the Decree Nisi. This is the point at which the District Judge looks at the Petition and decides whether the Petitioner is entitled to a divorce. In the vast majority of cases the Court simply approves the Petition.

The Court will then set a date for the formal pronouncement of the Decree Nisi. This is unlikely to be less than one month from when the application for the Decree Nisi is sent to the Court and depends mainly on the timetable at Court. Neither party has to go to Court for that hearing. Usually the Judge reads out the names of all couples who are divorcing formally in open Court to pronounce their Decrees Nisi without anyone attending Court. This is only the first divorce order and the parties remain married until the final order is made.

7. **Decree Absolute**

The divorce is not final until the Decree Nisi is made absolute. The Petitioner can apply for the final order, the Decree Absolute six weeks after the date of the pronouncement of the Decree Nisi. The Court should process the application within a week or so, but it can often take longer. The application for the Decree Absolute is processed by the Court staff without a hearing.

If the Petitioner fails to apply for the Decree Absolute within 3 months of six week date (i.e. roughly four and a half months from the date of the Decree Nisi), the Respondent can apply for the Decree Nisi to be made absolute. However, if the Respondent does make the application, he/she will not be granted the Decree Absolute automatically. A short hearing will be fixed before a District Judge who will consider whether it is reasonable for the divorce to be finalised.

8. **Time Estimate**

In all, a divorce can take as little as three to four months from start to finish, but can take six months or more. The timing will depend on whether either party delays in taking particular steps during the proceedings or if there are problems with the Court.

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