

## Marital Breakdown: A Brief Guide To Obtaining a Divorce

## BRIEFING

### Introduction

Bringing your marriage to an end is not usually complex. This briefing, written by our Family Law experts, provides an overview of the procedure involved.

Even if you are entitled to bring divorce proceedings, you may wish to consider other options such as judicial separation. We will provide you with separate advice if you consider this route might be your preferred option.

Judicial separation does not bring the marriage to an end and you are not free to re-marry at the conclusion of the proceedings in contrast to when you obtain your decree of divorce.

### The Process

#### When can proceedings begin?

Divorce proceedings cannot be commenced until you have been married for at least a year. In contrast, it is possible to start judicial separation proceedings, if you have been married for less than this period.

#### How is the divorce process commenced?

The person wishing to begin the divorce proceedings must file a 'petition' at Court. The person who files the petition is referred to as the Petitioner, and the person who receives the petition is referred to as the Respondent.

#### Grounds for divorce

There is only one ground for divorce and that is the irretrievable breakdown of the marriage.

The fact that the marriage has irretrievably broken down is evidenced in the petition by citing one of five facts:-

- **Adultery:** an adultery petition requires an admission by the Respondent that he or she has committed adultery within the last six months and that the Petitioner finds it intolerable to live with him or her. A couple cannot continue to live together for more than six months after the last act of adultery becomes known to the Petitioner, otherwise the Court will hold that it was not intolerable to live together. To minimise any acrimony, it is generally considered better not to

name any third party (referred to as the Co-Respondent) in the petition.

- **Unreasonable behaviour:** an unreasonable behaviour petition usually requires five to six examples of behaviour on the part of the Respondent which the Petitioner has found unacceptable. If you have already separated, it is sufficient for the last incident of unreasonable behaviour to have taken place within the six months prior to separation.

In cases where the parties remain reasonably amicable, it is often possible to agree the terms that are to be put into a petition prior to issue.

- **Two-year separation with consent:** a petition on this basis requires that the parties have lived apart for a period of two years prior to the petition being lodged at Court. This does not mean that you have to have lived in separate houses, but does require you to have led separate lives, for example, having separate bedrooms and not attending social activities together. The Respondent also has to consent to a divorce on this basis.
- **Desertion by your spouse:** the Respondent must have deserted you for a continuous period of at least two years immediately before the petition is sent to the Court.
- **Five years' separation whether or not your spouse consents:** this type of petition can be delayed by an assertion by the Respondent that divorce will cause grave financial hardship to him or her.

#### Should you be the Petitioner or the Respondent?

A divorce petition is often seen as a means to an end and in some circumstances it can be politic to agree to be the Respondent, rather than to commence the proceedings.

Generally, it is preferable to be the Petitioner for several reasons. It gives you

more control over the timetable of the divorce itself. You may also obtain an order for costs against the Respondent on the two fault-based petitions namely adultery or unreasonable behaviour.

#### Timescale

It usually takes between five to eight months to obtain a divorce although we normally advise our clients not to apply for the Decree Nisi to be made Absolute (the final step in the proceedings) until all financial matters have been resolved. This can delay the divorce.

#### Defended divorce proceedings

It is exceptionally rare for divorce proceedings to be defended. The Respondent has to argue that the marriage has not irretrievably broken down and has to provide an answer to the petition, either denying the adultery or denying the particulars of unreasonable behaviour.

A Respondent who is not prepared to agree to allow the petition to go through undefended, but accepts that the marriage has broken down, may choose to defend the petition and file their own petition, technically referred to as a cross petition. This will increase the costs of the divorce considerably for both parties but can, on occasion, be appropriate. It is also sometimes possible to agree that the Decree should be pronounced on both petitions, called cross Decrees.

#### **The Procedure**

##### Lodging the Petition

Once your divorce petition is drafted, it will be lodged at Court. If you have children, the Courts will want to see details of the arrangements being made and can, in very rare circumstances, order you to attend Court to explain the arrangements in more detail.

## Service of the Petition

A copy of the petition will then be served on your spouse, together with a form called an 'Acknowledgement of Service'.

In order for the divorce to progress without delay, your spouse must sign and return the Acknowledgment of Service to the Court within seven working days, confirming that he or she does not intend to defend the divorce. This is frequently dealt with by your spouse's solicitors. The Court will then send a copy of the Acknowledgement of Service to us.

## Applying for Decree Nisi

We will then prepare an application for Decree Nisi and a statement in support in which you confirm that the contents of the petition are true. These will then be sent to Court together with what is called a Request for Directions for Trial.

## Filing Documents at Court

These documents are placed before a District Judge who will decide whether or not the petition is proved. Sometimes the District Judge will require more information and this can cause a delay.

## Decree Nisi

If satisfied that you are entitled to a divorce, the District Judge will sign a certificate of entitlement to Decree Nisi. The certificate will be sent to us and will state the date on which the Decree Nisi will be pronounced. You do not have to attend this hearing. At this point, however, you remain married.

## Application for Decree Absolute

Six weeks and one day after receiving your Decree Nisi, we can apply for the 'Decree Absolute'. When this Decree is pronounced, you are finally divorced.

Your Decree Absolute in effect replaces your marriage certificate and you will need to produce it in the event that you wish to re-marry.

We usually advise the Petitioner not to apply for a date for pronouncement of Decree Absolute until the financial arrangements following the divorce are finalised.

The Respondent may apply for Decree Absolute three months after the date when the Petitioner could first apply but his or her application – in contrast to that of the Petitioner's – is not automatically granted in order to give the Petitioner the opportunity to oppose it, as appropriate.

You should also be aware that on divorce, if you have any bequests you have made to your spouse in a will, they will be treated as if your spouse has predeceased you. Depending on how your will has been drafted, it may mean that their share falls into the residuary estate or may even have to be divided in accordance with the intestacy rules.

## **For further information, please contact:**



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