

## Family and Divorce The Divorce Process – Costs and FAQs

The mechanics of obtaining a divorce are usually quite straightforward – particularly if the couple agree that the marriage is over.

Any difficulties tend to lie in resolving the related practical issues stemming from the divorce such as how to separate, where to live, arrangements for the children and any money matters.

Your attention will probably be concentrated on those related issues and the process of actually obtaining the divorce may seem blurred. Here we outline the framework of the divorce process, to highlight the key points and to set out the sort of timetable to expect.

### Who can start divorce proceedings?

Anyone who has been married for over a year can start divorce proceedings in an English County Court provided he or she is either “domiciled” in England or Wales or has been resident in England or Wales during the preceding year. It does not matter where the couple were married. You will need an original marriage certificate which will be retained by the Court.

### I have been married for several months and it has been a disaster. How quickly can I get a divorce?

You cannot obtain a divorce until you have been married for one year. In some circumstances you may be able to apply for judicial separation or annulment of your marriage before the 12 months has passed but these cases are rare. However you may, of course, simply separate now if you are really miserable and proceed with divorce after the 12 month period has passed.

### On what grounds can a divorce petition be started?

The only ground for divorce is that the marriage has irretrievably broken down, but there is a complication. A divorce will only be granted if one of the five facts laid down by law providing irretrievable breakdown is established.

### What are the “facts”?

- 1 Your spouse has committed adultery and you find it intolerable to continue living together.
- 2 Your spouse has behaved in such a way that it would be unreasonable to expect you to continue living together.
- 3 Your spouse has deserted you for a continuous period of 2 years or more.
- 4 You and your spouse have been living separately for 2 years or more and your spouse agrees to a divorce.
- 5 You and your spouse have been living separately for 5 years or more, whether or not your spouse consents to the divorce.

### If the marriage has “irretrievably broken down” and one of the five facts apply what happens next?

This will depend on your particular circumstances. It is often sensible to try to obtain your spouse’s consent to the Petition in advance and to try to reach agreement over the contents of the Petition (the Petition is the document that starts the divorce). For example if your spouse accepts that the Petition should be based on unreasonable behaviour only a brief outline of the particular behaviour may need to be given. Not saying all that might need to be said will not generally prejudice you.

### What does the petition actually look like?

Every Petition follows the same form. It contains basic information about names, addresses, ages of children and a statement that the marriage has irretrievably broken down. It will state the “fact” on which it is intended to rely.

The Petition will include a section (known as a “prayer”) which will include a request for the divorce to be granted. It may also include a request for a Court Order relating to any children, a claim regarding the legal costs of the divorce itself and an application for financial provision. This is in standard terms.

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The section regarding financial provision lists all the types of claims that can be made but they do not necessarily have to be made in all cases. The inclusion of this section is vital even if financial matters are agreed.

#### **Our family home is in my husband's sole name and he has threatened to lock me out. Can he lawfully do this?**

No. You have rights of occupation known as matrimonial home rights until after your divorce. Provided you stay put in the home your husband cannot evict you without a Court Order. Your solicitor can also prevent your husband from selling the home without your knowledge by using one of two different procedures applicable, depending on whether the title to your property has been registered at the Land Registry.

#### **Do I need to name a co-respondent in my adultery petition?**

No. You need not name them. Naming the co-respondent means they also have to be served with a copy of the petition. If the co-respondent fails or refuses to return an Acknowledgement of Service form then they either have to have the petition served on them personally or the petition served on them by a Court Bailiff. All this will cause delay. Sometimes your spouse may not have given you the correct spelling of the co-respondent's surname or their correct address. Both of these must be correct or substantial delays will result. If in doubt, leave it out!

#### **What about the children?**

A form is sent to the Court with the divorce Petition which will outline the arrangements relating to any children. The Court encourages couples to agree those arrangements. The form (known as a "Statement of Arrangements") is usually completed by the person filing the Petition. Preferably it should be sent to the other spouse before it is filed with the Court. If agreement is not reached this does NOT prevent the divorce from proceeding. An application can be made for the Court to make decisions about what is in the best interests of any children. The Statement of Arrangements only sets out the opinion and proposals of one party unless it is agreed in advance by both parties.

#### **How much does the divorce cost?**

This depends on the finances of each party to the divorce. Those who are unemployed or on a low income may be eligible for advice under Public Funding (formally the Legal Aid Scheme). This means the state would pay the solicitor's charges although these may have to be repaid. We charge an hourly rate and there are also Court fees that have to be paid. Email or call us and we will give you a clear guide on the costs applicable to your circumstances.

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

If the divorce is not contested by your spouse it will usually take between 4 to 6 months although there may be good reasons to delay the divorce being made final by what is called the Decree Absolute. Delays may also be caused for other reasons. We will conduct the divorce for you at the speed you wish subject to any delays caused by the Court process or your spouse. The formal procedure takes two stages – Decree Nisi and Decree Absolute. The Decree Absolute can be applied for no sooner than 6 weeks and a day after Decree Nisi and it is the Decree Absolute that finally dissolves the marriage.

#### **Are all the issues dealt with before the divorce is finalised?**

The divorce (called the "divorce suit") is treated separately from financial matters and the arrangements for any children. It is not necessary for financial arrangements to be completed by the time the divorce is made final although it may be advisable depending upon your circumstances to delay the Decree Absolute until all financial matters are resolved. Frequently they will still be in the early stages if finances are complicated even if the divorce suit has progressed. However, it should be possible, to resolve the immediate problems, to make temporary maintenance arrangements. In all aspects it is important to obtain legal advice and try to reach agreement with your spouse as soon as possible to avoid contested proceedings where larger legal costs would be incurred.

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#### Are the proceedings public?

Court proceedings in family law are usually private. This means that the public and press are not allowed access to the Court papers. However, the press are able to publish that a divorce has been pronounced. The information that they may disclose is very limited. They may disclose the “fact” of the divorce but they are not able to publish details of the adultery or unreasonable behaviour.

#### Will I have to attend court?

Usually it is not necessary for the parties to attend court to obtain a divorce.

If you are able to agree with your spouse about financial support, property and arrangements for children then you may not have to attend court at all.

You may have to attend a hearing if it is necessary to ask the court to make an order for financial support for you or if your spouse makes such an application, or if you cannot agree the arrangements for children. In the unusual circumstances where a spouse defends a petition there may be a need to attend court on at least one occasion.

#### Can I stop the divorce?

Yes. Once you have started the divorce you can stop it until the Decree Absolute ending your marriage is granted. It is harder for you to stop the divorce if it is your spouse that has started the divorce as he or she would generally be in control of the divorce and the speed in pursuing it.

#### Are there other options such as mediation?

If you do not consider your marriage has finally ended you may need to consider seeking counselling to achieve reconciliation. Even if a divorce does take place you may find the use of mediation or conciliation helpful to help you reach agreement with your spouse on any aspects that are disputed. We can explain this to you if you wish.

Instead of seeking a divorce you could seek an order for Judicial Separation which in many ways is similar to a divorce but you remain married.

#### Should I make a Will?

Yes. It is vital that you make a Will or review any existing will once you decide to divorce or you receive a petition. Otherwise it is likely that everything would still go to your spouse. This is very important but remember if you re-marry then your Will is automatically revoked and you will have to make a new one. We recommend you make a Will immediately and this should be reviewed after the divorce is concluded.