

HAGUE AND DIXON LLP

DIVORCE

We recognise the emotional trauma caused by marriage breakdown and will guide and support you through the process. We can also make referrals on your behalf for external support at this difficult time.

Divorce

A divorce formally ends your marriage.

There is only one ground for divorce, namely that the marriage has broken down irretrievably. The person who starts the divorce proceedings is 'the petitioner' and their spouse is 'the respondent'.

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.
- (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. 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.

The test for 'behaviour' is subjective and you must explain the impact of the behaviour on you.

Divorce: What happens next?

If you wish to commence divorce proceedings we will explain the procedure and send the proposed Divorce Petition to your spouse to try and reach an agreement regarding the

contents prior to being lodged at Court. This will hopefully reduce hostility, and save costs.

The Petition sets out the information regarding the marriage and the grounds upon which the divorce is sought.

Do I need to go to the Court ?

For the majority of cases, neither party will need to attend Court, and the Court will simply “rubber stamp” the divorce papers to enable the divorce to proceed. Sometimes, you will need to attend Court, for example if there is a dispute about costs.

Filing the petition

Once approved it will be sent to the Court together with the other requisite documents and the court fee. Once the court office staff have processed your petition, it will be sent to your spouse together with an acknowledgement of service form. Your spouse should complete this form indicating whether they want to defend the divorce and return it to the Court.

If your spouse does not return the form, it may be necessary for us to arrange for another set of the documents to be served on your spouse, unless we can prove 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 your spouse personally.

Once we receive the acknowledgement of service form from the Court, or you can prove that your spouse has received the petition, we can prepare your application for the decree nisi.

What next ?

Once the Acknowledgement of Service has been signed and returned for the Court, the next stage in the proceedings is for you to swear a statement in support of your petition. We then file this at Court to apply for the Judge to approve your petition and direct that the decree nisi, is pronounced.

What is the Decree Nisi?

This is a conditional order for divorce. It is pronounced automatically by a Judge on a fixed date. It is an interim order and you still remain married, It means that the Judge is satisfied that your marriage has broken down and that you are entitled to a divorce.

What is the Decree Absolute?

To apply for your divorce to be made final, you can apply for the Decree Absolute, six weeks and one day after the date of Decree Nisi. If you have not reached a financial

settlement, you may want to wait before making the application. If you are the Respondent you can only apply for Decree Absolute four months after the time when the Petitioner should have applied. However, the court will not automatically grant it, however. The court will have to consider whether it is reasonable to finalise the divorce.

You need to consider the following before applying for Decree Absolute:

1. If your spouse died before the financial arrangements are finalised, you may be better off because if he/she has not made a will, you may inherit a part of his/her estate automatically and in any event there would be no inheritance tax on anything that goes to you from the estate. There may also be pension rights or life policies which you would lose on decree absolute.
2. If your home is in your spouse's sole name, you will lose the right to occupy the property once decree absolute has been made.

We will advise you further as to how best to proceed in your particular circumstances.

Decree Absolute

This ends your marriage. You should retain it in a safe place as you will have to produce this if you wish to remarry.

How long will it take?

In all, the divorce can take as little as four to six months from start to finish. It can take a lot longer if there is a delay in taking particular steps, for example your spouse not completing the acknowledgement of service form or the Court not processing the paperwork quickly.

What about my Will during divorce proceedings?

If you own a property it is likely you own it as 'joint tenants'. This means that, if one of you dies, the survivor will be entitled to the whole property, even if divorce proceedings have been started or you are divorced, and irrespective of any provision in a Will or if no Will has been made irrespective of the intestacy rules.

It is possible to prevent this occurring by preparing a simple document known as a notice of severance which you should sign and which must be sent to your spouse for signature. After the notice has been sent to your spouse, even if he/she does not sign and return it, you can still apply to the Land Registry to sever the joint tenancy. The property will then be owned by you both as 'tenants in common'. This means that, in the event of you dying before your spouse, your share in the property will pass according to the terms of your Will or under the rules of intestacy if you have no valid Will.

Therefore, in order to ensure that your spouse does not become entitled to your share in the property in the event of your death it will be necessary for you to prepare a Will and a Notice of Severance.

I want to Remarry What do I do?

Please tell us first and do not make marriage arrangements until all matters have concluded.

Divorce timescales can be elongated and remarriage has serious consequences for your divorce. It can stop you from making any application to Court to determine the financial issues arising from your divorce. If you are the Petitioner in the divorce, the Petition includes the right to make a financial claim against your spouse, if you have not reserved this or you are the Respondent, your right to have made this claim may have been lost.

You will also need to consider if your will is up to date.

Reconciliation and Stopping the Divorce

It is possible for proceedings to be brought to a halt to allow a reconciliation if both parties agree. Only the Petitioner however as the person with control of the proceedings can do this.

However if the Decree Nisi has already been pronounced this could be difficult and your spouse could conclude the divorce against your wishes by applying for the Decree Absolute.

Please do seek advice from us if you are considering a reconciliation. If you reconcile or cohabit whilst the divorce is ongoing it may affect your ultimate ability to divorce and the timescale generally. If you cohabit for six months or periods totalling six months the divorce could be disallowed or the period of separation discounted.

What about Financial Claims?

Claims for money and property are raised but are separate from the divorce.

Please refer to our **Matrimonial Financial Guidance Sheet**.