



## **DIVORCE PROCEDURE**

The mechanics of obtaining a divorce are usually quite straight forward, particularly if the couple agree that the marriage is over. The difficulties are more likely to arise regarding where the couple and their children are to live, arrangements for the children and financial matters. As your attention will be concentrated on these related issues, the process of actually obtaining a divorce may appear blurred. The purpose of this leaflet is to outline a broad framework of the Divorce Process.

### **WHO CAN START DIVORCE PROCEEDINGS?**

Anyone who has been married for over a year provided one or other of the couple is either domiciled or has been resident in England or Wales during the preceding year. It does not matter where the couple married.

### **ON WHAT GROUNDS CAN A DIVORCE PETITION BE STARTED?**

The only grounds for divorce are that the marriage has irretrievably broken down. To show this is the case one of the five facts laid down by law needs to be established, namely:

- (a) Your spouse has committed adultery and you find it intolerable to continue living together;
- (b) Your spouse has behaved in such a way that it would be unreasonable to expect you to continue living together;
- (c) Your spouse has deserted you for a continuous period of two years or more;
- (d) You and your spouse have been living separately for two years or more and your spouse agrees to the divorce;
- (e) You and your spouse have been living separately for five years or more whether or not your spouse consents to the divorce.

### **FORM OF THE PETITION AND ACCOMPANYING PAPERS**

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 and the statement of the fact relied upon. The Petition will include a section known as “a prayer” which will include a request for the divorce to be granted, request for Orders in relation to children, a claim regarding the cost of the divorce and an Order for financial provision.

The original marriage certificate, or a certified copy, is filed at court and remains on the court file.

## TIME TABLE

- (a) After one year of marriage either spouse may start the divorce. This person is referred to as the Petitioner. The Petition is completed and sent to the Bury St Edmunds Divorce Centre (the Court) together with the original marriage certificate or a certified copy. A fee currently of £550 is payable. In certain situations where there are complex issues a Petition may be issued in the Central Family Court.
- (b) The Court will issue the Petition and return them to us for service on the other spouse referred to as the Respondent, or the Court will send the papers directly to the Respondent. The Court will normally do this within 14 days, but it can take anything up to 30 days if the Court is very busy.
- (c) The Respondent must return the "Acknowledgement of Service" form within 7 days of receiving the Petition. If the Respondent wishes to defend the Petition a defence called "an Answer" must be filed within 21 days beginning with the date by which the Acknowledgement of Service needs to be filed, i.e. 28 days after receiving the Petition. If the Respondent does nothing, it will be necessary to prove to the Court that the Respondent has received the papers.
- (d) The Court will send us a copy of the Acknowledgement of Service. If the divorce is not defended the Petitioner can apply for the *Decree Nisi* to be pronounced. The Petitioner's solicitor prepares a Statement for the Petitioner to sign confirming that the contents of the Petition are true. The Statement and request for a date for the first decree of divorce, namely *Decree Nisi* is submitted to the Court.
- (e) The Court will look at the papers and provide a certificate for the *Decree Nisi* to be pronounced provided all matters are in order. The Petitioner and the Respondent are advised of the date fixed for the *Decree Nisi*. It usually takes between 14 and 30 days for the Court to do this. Depending on the Court's diary, the date is likely to be 6-12 weeks from the date on which the application is lodged. It is not necessary for either the Petitioner or the Respondent to attend Court.
- (f) Six weeks and one day after the date of the *Decree Nisi* the Petitioner may apply for the final decree of divorce namely the *Decree Absolute* by sending an application to the Court. If the Petitioner does not apply for the *Decree Absolute* the Respondent may apply three months after the Petitioner is able to apply for the *Decree Absolute* i.e. 3 months, 6 weeks and 1 day after the *Decree Nisi*.

## NEGOTIATIONS, APPLICATIONS AND ORDERS IN RELATION TO FINANCES

These can take place at any time before, during or after the divorce. The Decree Absolute may be delayed until after the finances are resolved. The Court will not of its own volition impose a Financial Order. The Financial Order either needs to be agreed or an Application made to the Court for the Court to decide. An Application can be made by either spouse.

Mistakenly, many people believe that once the Decree Absolute is made this deals with the finances too. This is not the case. With no Financial Order the parties may be divorced but the financial rights and duties remain outstanding subject to the effect of remarriage set out below. This could mean that some years later a former spouse could try to obtain an order against the other spouse for maintenance, lump sum, transfer of property or pension orders.

## EFFECTS OF DIVORCE

The Decree Absolute should be kept safely as this replaces the Marriage Certificate. Divorce affects inheritance and your Will. Unless a contrary intention appears in the Will, the Decree Absolute will mean gifts to the former spouse and their appointment as Guardian or Trustee will fail. A Will is revoked by the marriage or remarriage of the person making the Will, unless the Will is made in contemplation of that marriage. Where a person dies without having made a Will, the Intestacy Rules apply. The former spouse will not benefit under those rules, but they may in certain circumstances, be able to make a claim against the deceased's Estate under the Inheritance (Family and Dependents) Act 1975.

## TIMING OF FINANCES

An application for a Financial Remedy Order (previously known as "Ancillary Relief") may be made at the same time as the Divorce application or at any time after, but prior to any remarriage. It is usual to resolve the finances prior to applying for Decree Absolute. The Financial Order will be binding once sealed by the Court and a Concluded Agreement is likely to be enforceable prior to this.

## RE-MARRIAGE AND THE RE-MARRIAGE TRAP

Neither party to the marriage is free to remarry until the final decree in divorce has been made known as the 'Decree Absolute'. It is important to note that neither person should remarry until they have taken legal advice in relation to the financial implications for them of remarriage. You must make your application for the finances to be resolved prior to you remarrying or you will not be able to make a financial claim within divorce proceedings. Any maintenance payments or claims for maintenance stop on remarriage (Matrimonial Causes Act 1973 s 28(3)). Although the right to spousal maintenance cease upon remarriage, maintenance for children continues, as does any Child Support Assessment, but any change in circumstances may affect the level of payment. The right to apply for financial provision is lost if the application is not made to the Court prior to remarriage.

If you would like to understand how your personal circumstances apply to the law, practical issues, your options for managing family change and planning for the future; please contact us by telephone to arrange an appointment or by email [FamilyTeam@srb.co.uk](mailto:FamilyTeam@srb.co.uk)

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