

GUIDE TO DIVORCE AND JUDICIAL SEPARATION

1. Legal Terms

"The Petition"	Document by which the divorce proceedings are commenced.
"Petitioner"	The person who commences the proceedings by filing a Divorce Petition.
"Respondent"	The other spouse against whom the proceedings are brought.
"Answer"	The respondent's defence to the Petition if the Respondent decides to defend
"Decree Nisi"	Certification by the Court that the Petitioner is entitled to a Decree of divorce. It does not entitle the parties to re-marry and does not dissolve the marriage.
"Decree Absolute"	Document issued by the Court which dissolves the marriage and enables the parties to re-marry.
"Affidavit"	A written statement of fact which is voluntarily sworn under oath or, alternatively, affirmed.
"Divorce Proceedings"	Court Proceedings brought by the Petitioner for the purpose of ending the marriage.
"Party"	A person who is a "party" to the proceedings (Petitioner or Respondent).

2. Ground for Divorce

The sole ground for divorce is the irretrievable breakdown of the marriage. The breakdown of the marriage must be proved by one of the following five facts:-

- (a) the Respondent's adultery and the fact that the Petitioner finds it intolerable to live with the Respondent;
- (b) the Respondent's unreasonable behaviour and its effect upon the Petitioner;
- (c) the Respondent's desertion;
- (d) two years' separation and the Respondent's consent to a divorce;
- (e) five years' separation.

A Petition for Divorce may not be presented to the court within one year of the marriage.

3. Procedure for undefended Divorces

- (i) Where appropriate, write to the Respondent in an attempt to agree the contents of the Petition.
- (ii) File a Petition and, if there are any children, Statement of Arrangements in respect of the children. (If possible, the arrangements for the children should be agreed between

the parties in writing.)

- (iii) Serve the Notice of Proceedings, Petition and Statement of Arrangements on the Respondent.
- (iv) The Respondent acknowledges service.
- (v) Petitioner files affidavit in confirmation of facts contained in Petition and applies for the matter to be entered into the Special Procedure List for undefended divorces.
- (vi) Court pronounces the Decree Nisi if satisfied of entitlement to divorce and makes any orders as to costs.
- (vii) A minimum of six weeks later the Petitioner may apply to the Court for the Decree Absolute of divorce.
- (viii) The Court grants the Decree Absolute and the marriage is dissolved.

4. Length of Time to be Taken by Proceedings

If the Respondent co-operates by filing an Acknowledgment of Service of the Petition when received, the proceedings normally take about five months. If the Respondent does not co-operate, they may take up to a year because it becomes necessary to prove to the Court either that the Respondent has been served with the Petition or that all reasonable steps to serve the Respondent have been taken.

5. Stopping the Proceedings

It is open to the Petitioner to stop the proceedings at any time up until the pronouncement of the Decree Absolute. However, four and a half months after the pronouncement of the Decree Nisi, the Respondent can make an application for the Decree Nisi to be made Absolute in which case it may be difficult to persuade the Court not to grant the Decree Absolute. Where a Petitioner fails to apply for the Decree Absolute of Divorce within 12 months from the date of the Decree Nisi, it becomes necessary for the Petitioner to file an Affidavit in support of the application for the Decree Nisi to be made Absolute, setting out the reasons for the delay.

6. The Costs of Undefended Divorces

Under normal circumstances, the divorce Petition contains a prayer that the Respondent shall pay the Petitioner's costs of the divorce suit where the Petition relies on the facts referred to in paragraphs 2(a) to (c) above. However the Petitioner often agrees to waive his or her claim for costs if the Respondent co-operates with the Court procedures and does not attempt to defend the proceedings. However, the general rule is that, if a Petitioner is granted a Decree of Divorce on any of those grounds, the Respondent will be ordered to pay the Petitioner's costs.

7. Defended Divorces

The Respondent may decide to defend the proceedings, although this is unusual. The Respondent will indicate this when filing the Acknowledgment of Service and will have to file an Answer within 28 days of being served with the Petition. The costs of defended proceedings are far higher and they take far longer to finalise. It is rare for a defended divorce to proceed to a final hearing and the procedures for a defended divorce are not covered in this fact sheet.

8. **Appointment of a Guardian**

Any appointment by one spouse of his or her former spouse as guardian of any children is deemed to have been revoked at the date of Decree Absolute unless a contrary intention is shown in the instrument of appointment.

9. **Inheritance - Wills**

Marriage, divorce and re-marriage all have an effect on what will happen to your property upon death. Some key points are:-

- (a) A Will is revoked by the marriage (or re-marriage) of the Testator (the person making the Will) unless the Will was made in contemplation of the marriage (or re-marriage) and the Testator intended that the Will **should not** be revoked by the marriage.
- (b) Unless a contrary intention appears in the Will, the granting of a Decree Absolute of divorce has the effect that any property which is devised or bequeathed to the former spouse will pass as if the former spouse had died on the date on which the marriage is dissolved. In addition, any provision in the Will appointing the former spouse Executor or Trustee shall take effect as if the former spouse had died on the date of the Decree Absolute.
- (c) It is open to a former spouse, who has not remarried, to make a claim against the other former spouse's Estate under the Inheritance (Family and Dependents) Act 1975, unless there is a Court Order in force preventing such an application.
- (d) Where a person dies without having made a Will, the "Intestacy" Rules apply. The former spouse will have no rights to the deceased's estate under those rules.

10. **Judicial Separation**

Some people find it less traumatic to accept the half-way house of a Judicial Separation rather than to sever their ties with their spouse completely by a Divorce. If proceedings are required within one year of a marriage then only Judicial Separation is available.

- (a) A Decree of Judicial Separation does not entitle the parties to re-marry.
- (b) The facts that must be proved to obtain a Decree of Judicial Separation are the same as those referred to in paragraphs 2(a)-(e). It is not necessary to prove the marriage has irretrievably broken down.
- (c) There is only one Decree of Judicial Separation (as opposed to a Decree Nisi and Decree Absolute of Divorce).
- (d) The procedures are similar to those referred to in paragraph 3(i)-(v) in an undefended case.

11. **The Effect of a Decree of Judicial Separation**

- (a) The parties are no longer bound to co-habit with each other.
- (b) If either party dies Intestate whilst the Decree is in force and the separation is continuing, his or her property devolves as if the other party to the marriage had been dead.
- (c) Wills are unaffected by a Decree of Judicial Separation and a spouse will continue to

benefit under the Will despite the Judicial Separation. It is therefore important to make a new Will if you do not want this to happen

- (d) A Decree of Judicial Separation is not a bar to a subsequent Divorce.

12. Finance

A Petitioner and/or a Respondent may bring Proceedings for financial relief for themselves and any children within Divorce or Judicial Separation Proceedings. This fact sheet does not deal with finance, but it is essential to appreciate that, if a Petitioner or Respondent re-marries, he or she will not be entitled to make an application for financial orders (whether financial provision property adjustment or pension sharing orders within those Divorce or Judicial Separation Proceedings).

13. Joint Tenancy

Where a husband and wife own a property jointly as joint beneficial owners and one party dies, the property will automatically pass to the other party by survivorship. It may therefore be advisable to sever the beneficial Joint Tenancy straight away. This is a simple procedure. You then become Tenants in Common as a result of which one share will be part of the deceased party's Estate and the other share will belong to the survivor.

The purpose of this guide is to give an overview of the divorce process and is not intended to replace expert advice on your own position. You should not rely on what is said in this fact sheet alone. If you would like advice as to your individual position we would be happy to accept instructions to advise you.

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