

MENNEER SHUTTLEWORTH

Family Law

Factsheet 1

DIVORCE

The only ground for divorce in England and Wales is the irretrievable breakdown of a marriage. Irretrievable breakdown must be established by proving one of five facts:-

- Your spouse (i.e. your husband or wife) has committed adultery and you find it intolerable to live with them. Your spouse must admit that they have committed the alleged adultery or, alternatively, you must prove that adultery has taken place;
- Your spouse has behaved in such a way that you cannot reasonably be expected to live with them;
- You and your spouse have lived apart for a period of two years and your spouse consents to a divorce being granted;
- Your spouse has deserted you for a period of two years or more;
- You and your spouse have lived apart for a period of at least 5 years. No consent to the divorce is required although your spouse can claim that they would suffer grave hardship as a result of the divorce. This is a defence to a divorce based on five years separation and, if the court agrees that your spouse will suffer grave hardship, then the divorce will not be granted. The grave hardship could be financial, i.e. the loss of a chance of acquiring a financial benefit that could be acquired if the divorce did not proceed such as a pension or the grave hardship could be of another nature eg. religious censure or social ostracism.

Unless you and your spouse have lived apart for a period of two years or more, it is necessary to establish some form of fault i.e. adultery or unreasonable behaviour. If you live with your spouse for 6 months or more after you become aware of the adultery or after the last incident of unreasonable behaviour the Court will consider that you have become reconciled and it is unlikely that a divorce will be granted.

The Court will allow you and your spouse to attempt a reconciliation for a period of up to 6 months. This will not affect your ability to petition for divorce on the grounds of two years separation, desertion or five years separation. However, the period of the attempted reconciliation must be added to the period of separation so that the total equals at least two years or five years depending on the fact being alleged to prove irretrievable breakdown.

Most divorce petitions are not defended and the procedure is usually very straightforward. No attendance at Court is required. The entire process takes approximately 4 – 6 months to complete. However, if there are financial matters to be settled then it may take longer.

A Brief Outline of the Divorce Procedure.

1. A divorce petition is lodged at the Court by the Petitioner together with the original marriage certificate a Court fee of £340.00 and if there are children, a Statement of Arrangements for Children Form. This form requires the Petitioner to provide details in respect of the arrangements for the children eg. where they will live, go to school and the contact they will have with each parent. The Court will usually serve the papers on the Respondent (ie. the person being divorced).
2. The Respondent will then have to complete an Acknowledgement of Service form stating when and where they received the divorce petition and stating whether it is their intention to defend it. The form must be returned to the Court within 7 days. If the Respondent intends to defend the divorce proceedings then they have a further 21 days to file a defence called an Answer and perhaps a Cross Petition if they allege that the breakdown of the marriage was not their fault but the fault of their spouse.
3. If the Respondent does not intend to defend the divorce proceedings then the Petitioner can apply to the Court for a Decree Nisi of divorce. The application must be accompanied by an Affidavit, sworn by the Petitioner, confirming, amongst other things, that the contents of the Petition are true. The Decree Nisi will be pronounced in open court although it is not necessary for either party to attend.
4. The Petitioner can apply for the Decree Absolute 6 weeks and 1 day after the date of pronouncement of the Decree Nisi. There is a Court fee of £45 to pay. The Decree Absolute is the final decree which brings the marriage to an end. If the Petitioner does not apply for the Decree Absolute then the Respondent can apply 3 months after the 6 week period has expired. It is not advisable to apply for the Decree Absolute until financial matters have been finalised. If either party remarries before financial matters are settled then that person loses the right to make an application to the Court for financial provision to be made for them from the assets of the previous marriage.

The information contained above is intended for general guidance only. It is not intended to be a substitute for specific legal advice.

For help and assistance please contact our Family Law Partner Amanda Wilson on 01424 720044 e-mail awilson@menneershuttleworth.co.uk.