

DIVORCE – The Basics

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

1. Your husband or wife has committed adultery and you find it intolerable to live with him or her. Your husband or wife must confirm that they have committed the alleged adultery or, alternatively, you must prove that the adultery has occurred;
2. Your husband or wife has behaved in such a way that you cannot reasonably be expected to live with him or her;
3. You and your husband or wife have lived apart for a period of two years and both consent to a divorce;
4. Your husband or wife has deserted you for a period of two years or more;
5. You and your husband or wife have lived apart for a period of at least 5 years. No consent to the divorce is required by your husband or wife although they could 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 husband or wife will suffer grave hardship, then the divorce will not be granted. The grave hardship can be financial, e.g. the loss of a chance of acquiring a financial benefit that could be acquired if the divorce did not proceed, or of another nature e.g. religious censure or social ostracism.

Unless you and your husband or wife 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 husband or wife 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 forgiven your husband or wife and it is unlikely that a divorce will be granted.

The Court will allow yourself and your husband or wife 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 used to prove irretrievable breakdown.

The majority of divorces 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 together with the original marriage certificate and, if there are children, a Statement of Arrangements for Children Form and the Court fee of £300. The Court will serve the papers on your husband or wife or it can be arranged for them to be served personally although not by you.
2. Your husband or wife will then have to complete an Acknowledgement of Service form stating when and where they received the divorce proceedings and stating whether it is their intention to defend these. The form must be returned to the Court within 7 days. If your husband or wife intends to defend the divorce proceedings then they have a further 21 days to file an Answer and perhaps a Cross Petition.
3. If your husband or wife does not intend to defend the divorce proceedings then you can apply to the Court for a decree nisi of divorce. It will be necessary for you to swear an Affidavit in support of your divorce petition which will accompany the application to the Court. The Decree Nisi will be pronounced in open court although it is not necessary for you or your husband or wife to attend.
4. You 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 £40 for doing so. The Decree Absolute is the final decree which brings the marriage to an end. If you do not apply for the Decree Absolute then your husband or wife 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 from 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.