

Guidance on Separation and Divorce

Following the initial interview there are various points that you need to consider:

1. Marriage Counselling and Conciliation

We considered this when we met to discuss matters initially but please give serious thought as to whether or not the relationship has finally broken down. If it has, and you feel that the marriage should be ended, then Proceedings for Divorce or Judicial Separation may well be appropriate. If the relationship has not broken down then it may well be that a reference to the conciliation services would assist. Please therefore feel free to discuss this with us when you next attend the office.

2. Mediation

Mediation is available to assist couples separating from all types of relationships, married or not. Mediation can be used to help settle all or any of the issues between you and your separating partner, including arrangements for the children, financial arrangements, dividing up the property or other practical issues connected with your separation or divorce. It is generally better if both parties can sort out together the practical arrangements for the future and the aim of mediation is to help you find a solution that meets the needs of you all. If you wish to use an independent family mediator, please contact me.

3. The Petition

The most common type of Petition issued is a Petition for Divorce.

A Petition cannot be issued within twelve months of the date of the marriage. Once the twelve month period has expired a Petition may be presented providing we can satisfy the Court that you have good reasons for saying that the marriage is at an end.

We have to show that the marriage has irretrievably broken down. We show that by using one (or more) of the following facts:

- that your spouse has committed adultery (this may have arisen prior to or even following separation)
- that your spouse's behaviour has been so bad that you can no longer be reasonably be expected to live with them (we need to look at any incidents that had arisen over the last two or three years)
- that your spouse deserted you at least two years ago
- that you and your spouse have lived apart for at least two years and that your spouse agrees to a divorce proceeding
- that you and your spouse have lived apart for at least five years.

Assuming one of these can be proven then one party will issue a Petition. This is a form that will be filled out by the Solicitors acting on behalf of the Petitioner, which will summarise the background to the marriage and the grounds for divorce. If there are dependent children then a Statement of Arrangements has to be completed which provides additional information in connection with the arrangements for the children such as health, accommodation, education, financial support, etc.

We also need to send either the original marriage certificate or a certified copy from the Church or from the Registrar's Office.

Once all this information is to hand the Divorce Petition can be issued in the local Divorce County Court. An issue fee of £300 is payable to the Court, unless the Petitioner is in receipt of benefits in which case the Petitioner may be exempt from the issue fee. It may be possible to include in the Petition a claim for costs against the Respondent and if an order is granted by the Court the costs should be refunded to the Petitioner. This is not automatic and action has to be taken to enforce the Order for costs, which does incur further fees.

The papers are then forwarded to the Respondent who is given an opportunity to comment on both the Petition and on the Statement of Arrangements. The Respondent strictly speaking has eight days in which to reply to the divorce papers by returning the Acknowledgement of Service form. However sometimes to expect a reply within this period is unrealistic and, generally speaking, an extension of time in which to reply may well be appropriate.

If the Respondent fails to return the Acknowledgement of Service form to the Court then it will be necessary for the Petitioner to arrange for the Respondent to be served personally by the Court Bailiff. If the Petitioner is not in receipt of Legal Funding then there is a fee of £10.00 for the Court Bailiff to serve papers. If the Respondent still fails to file the Acknowledgement of Service at Court then the Petition can still proceed but further application needs to be made.

Generally speaking Petitions are undefended. What this means is that the Respondent will file at Court the Acknowledgement of Service which confirms that he or she does not intend to defend the Petition. A copy of that Acknowledgement is then sent to Solicitors acting on behalf of the Petitioner. Those Solicitors will prepare an Affidavit which the Petitioner will have to swear. This document will be filed at Court. The Court will then check the papers to confirm all the papers are in order and to fix a date for pronouncement of the decree nisi. There is generally no need for either party to attend the decree nisi appointment unless the Petitioner is looking for the Respondent to pay his or her costs and the Respondent is objecting to that application.

Obtaining the decree nisi does not mean that you are divorced. It simply means that the Petitioner must wait a further six weeks before applying for the decree absolute. If the Petitioner does not apply for the decree absolute six weeks after pronouncement of the decree nisi then the Respondent may apply but only after a further three months has elapsed (in other words the Respondent has to wait four and a half months before being able to make an application). Again a fee (£40.00) is payable to the Court by the

Petitioner to obtain the decree absolute. This Court fee is payable by the Petitioner. If the Petitioner does not apply and the Respondent applies then the Respondent has to file an application to Court. A hearing date will be fixed unless, in the meantime, the Petitioner agrees to pronouncement of the decree absolute.

Once the decree absolute is pronounced the marriage is at an end and then either party can remarry. The procedure normally takes between three and six months from commencement of the Proceedings. Also the Proceedings can be stopped at any time up to decree absolute.

Pronouncement of the decree absolute also means that any mention of the former spouse in the Will is deleted. In other words if following separation the Wills were still in effect (ie. no post separation Will has been made) then any gift in those Wills to the former spouse and any appointment in those Wills of the former spouse either as an executor or an administrator (a person who deals with the administration of the estate) lapses.

Another kind of Petition that is sometimes issued is one for judicial separation.

The grounds for the issue of such a Petition are exactly the same for a Petition for divorce (see above) but this Petition can be issued in the first twelve months of the marriage and the effect of the pronouncement of the decree is that the marriage is not at an end but the parties are judicially separated". If at any stage during or after the judicial separation proceedings a divorce is contemplated, then a new divorce Petition must be issued.

4. Your Home

If the property has been rented either from the Local Authority or from a private Landlord then the question of whose name the tenancy remains in must be addressed. having a name removed from the tenancy agreement may result in losing a right of occupation.

If you own your own home (and it is in your sole name) then if your spouse has lived there with you he or she may well be able to register a right of occupation. If they do so then this means that you will not be able to sell the house without them being notified in advance.

If your spouse owns the property in his or her sole name and you have used it as your residence then you may be able to register your right of occupation and again this means that your spouse would not be able to sell the property without you knowing in advance.

If, as is generally the case, the property is owned by you both then you are likely to hold the property either as joint tenants or tenants in common. The difference is of major significance in the event of either you or your spouse dying whilst the property remains jointly owned.

If you are joint tenants and either of you dies then the deceased's interest in the

property will pass to the surviving joint owner irrespective of any contrary wish in the deceased's Will. Most couples hold the property as joint tenants and in those circumstances it is often important to consider effecting what is known as a severance of the joint tenancy. This simply requires you to sign a form which your spouse must acknowledge receipt of. The effect of severing the joint tenancy is to ensure that in the event of the death of one of the joint owners then the deceased's share in the jointly owned property will pass in accordance with the terms of their Will (often to children if there are any). By severing the joint tenancy you and your spouse own the property as tenants in common. If you have not made a Will then we would advise you to do so, as otherwise your Estate may still pass to your spouse under the laws of intestacy.

5. The Children

It is important to try and continue to talk with your spouse as regards the children if at all possible thereby avoiding the need for the involvement of the Court.

If therefore you and your spouse have reached an agreement as regards the children (for example with whom they are to live, how frequently they are to see the party with whom they do not live, what arrangements are to be made for birthdays and Christmas, etc) then the Courts will not necessarily become involved, but do feel free to discuss those arrangements with us. A degree of flexibility on all sides is generally necessary. The welfare of the children is obviously the most important matter to consider.

If you cannot agree about the children then you can use a local Family Mediation service to try and resolve your differences. I will supply you with further information upon request. Alternatively, an application can be made to the Court. On any such application the welfare of the children is the main consideration.

If the children were born to you during the marriage, or if they were born before but the parents then married each other, then both parents have parental responsibility. This is the ability to make decisions about the children, both in the short term and the long term and this will not be lost upon there being Divorce Proceedings.

6. Financial Matters

Again if it is possible for you and your spouse to discuss these matters between you and agree as much as possible then that would certainly assist. It is important for us to advise you upon any agreement that you may have considered or upon any alternative course of action that may be appropriate. We can, however, only fully advise once there has been full and frank disclosure of both parties financial positions. Please discuss these matters with us.

I would mention that you and your spouse can attend Mediation to discuss these matters in a relaxed and professional atmosphere in the hope of reaching agreement on these issues. I can then advise you on the outcome of the mediation sessions. Mediation can cut through lengthy correspondence between solicitors therefore achieving less legal costs and hopefully, an amicable agreement.

7. Joint Bank Accounts etc

It is important to consider whether or not these should remain in joint names in which case you run the risk of your spouse withdrawing all the money and, possibly, obtaining an overdraft for which you may become wholly or partly liable.

8. Your Will

Upon separation most parties tend to prefer to leave their assets to someone other than their spouse. It is important therefore to make a Will. This documents is significant in two respects - firstly it ensures that any assets that you leave go to the people of your choice and secondly that if you have any children then you have the opportunity to nominate a guardian with whom they could live in the event of your spouse not being in a position to look after them personally.

Please note that when you make a new Will any previous Wills (such as any that you made when you and your spouse were together) will automatically be revoked.

Please note that any Will (including a new Will) that you make will be automatically revoked in the event that you remarry at a later date.

9. Costs and funding of the case

You will have been advised at your initial meeting in connection with the question of costs but if you have any queries please speak with the lawyer handling your matter.

10. What happens next?

If you wish us to we can write to your spouse advising them that we are representing your interests, outlining the questions that need to be resolved and pointing out that they are entitled to independent legal representation. Hopefully your spouse or his or her Solicitors will respond quickly.

This summary is intended as a guide only and not necessarily strictly related to your own matter. Please speak with your lawyer over any points that concern you or over which you have a query.