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SOLICITORS



Guide to Divorce and Separation

A guide by Burton & Dyson



Introduction

Even the most amicable divorce or dissolution is likely to be difficult and stressful at times. If you are already feeling upset and angry, then worrying about legal proceedings, your financial arrangements and what happens to you – and your children – can be an additional concern.

If you have not consulted a solicitor before, you may also feel anxious about seeking legal advice. In fact, this is one of the wisest moves you can make.

Independent legal advice can be crucial in helping to resolve issues within divorce, for example when you are not sure about whether you have grounds for divorce, your partner does not agree to a divorce or you have concerns about financial issues and how to divide your property, assets and/or liabilities.

Your solicitor's job is to look after your best interests, and those of any children. They will give realistic, professional advice that is right for you and your circumstances, using their knowledge of the law and their professional experience.

Divorce law has been designed to be flexible enough to meet the different needs of every couple affected – around 150,000 marriages end in divorce each year in England and Wales alone – so at times it can seem complex and confusing.

This guide covers some of the key points relating to separation and divorce. For simplicity, we use “partner” to mean a husband, wife or civil partner and “married” to describe being married or in a civil partnership. We also use the word “divorce” for both married couples and civil partners, although the legal word for the equivalent of divorce for civil partners is “dissolution”.

The law is substantially similar for both marriages and civil partnerships and we raise the main differences between them.

Divorce

- The court will only grant a divorce if a judge agrees that the marriage has irretrievably broken down. Irretrievable breakdown must be evidenced to the court by showing that one of the following five facts exists. These facts do not have to have caused the breakdown of your marriage; their function is to show that the breakdown has actually occurred:
 - adultery by your partner (this cannot be relied upon by civil partners)
 - unreasonable behaviour by your partner
 - desertion for at least two years
 - two years' separation, if both parties agree to the divorce
 - five years' separation, if there is no agreement to the divorce and none of the above circumstances have arisen
- If you are filing for divorce, you set out your evidence in a document called a petition. If you file for divorce you are called the petitioner and your husband or wife is called the respondent.

Once you file your petition to the appropriate court, you have started the divorce process.

- What happens next depends upon whether or not your partner contests or agrees to the divorce. For example, the court must agree with arrangements made for any children, such as who they will live with and what contact they will have with the non-resident parent before the divorce is granted.
- The first stage of the actual divorce is called the decree nisi and it is granted only when a judge is satisfied that there are proper grounds for a divorce.



The judge will see whether the financial issues and arrangements for the children have been agreed or are in the process of being resolved.

- The final stage of a divorce is called decree absolute, for which you can apply six weeks and one day after the decree nisi.
- When you receive the decree absolute, you are no longer married. The court will only grant the decree absolute when the judge agrees that all arrangements for the children are satisfactory. Any financial order will also only come into force after the decree has been made absolute.

It is important to keep the decree absolute safe as you will not be able to remarry without it.

Financial relief

The financial proceedings are separate from the divorce proceedings. To start these proceedings, a document known as Form A must first be filed at court.

The court will then draw up directions and both parties will disclose their financial circumstances to the other. The parties can then set about seeking a financial settlement without the court's involvement.

If an agreement cannot be reached between the parties, then the matter will be heard by a judge at what is called a first directions appointment (FDA). This hearing is utilised as a "housekeeping" hearing, ensuring that the parties have disclosed their full financial position supported by documentation. The Judge will give directions as to any other documents that will need to be filed, such as valuations of properties.

If the parties have made full disclosure, then this hearing may be converted into a Financial Dispute Resolution (FDR) hearing.

No financial order can be made by the court at this point without the consent of both parties. The same also applies for the FDR hearing, if this is necessary.

If the finances still cannot be resolved, then the financial application will be heard at a final hearing, when the court's order will be imposed and binding upon the parties, subject to both parties being open and transparent about their finances. If this has not happened, one party might choose to bring the matter back before the court.

The court can make a number of orders relating to financial matters, which may include maintenance for your partner and/or children, a lump sum for your partner (and children, if necessary), a property adjustment or transfer of property order (such as selling the house or putting it into one person's name) or giving you or your partner a share of the other person's pension fund.

Ancillary relief

Either party, regardless of who initiated the divorce proceedings, can claim ancillary relief, which may deal with the sale or transfer of property, maintenance payments, a lump sum payment and/or a pension sharing or attachment order. Such a claim can be made at any time, sometimes many years after the divorce or dissolution.

If your partner issued the divorce proceedings, then his/her prayer for ancillary relief would usually be included in the Prayer of the Divorce Petition. Should your Partner re-marry without bringing a formal application for ancillary relief, he/she would not be precluded from doing so at some time in the future.

However, if you are the Respondent in the divorce proceedings and go on to re-marry without first lodging an Application for Ancillary Relief, you would be debarred from bringing that claim.

If you need help deciding whether you can apply for an order, it would be wise to seek legal advice. Even if you think you can reach an agreement with your former partner, talking to a solicitor will make sure your interests are protected.



During the ancillary relief process, both parties must complete a statement detailing all his or her income, property and assets. This is known as Form E and must be accompanied by:

- property valuations
- mortgage statements
- insurance policy valuations
- bank statements
- business accounts
- pension valuations
- payslips and P60s
- any other useful information, such as credit card statements

Both parties will be encouraged to reach an agreement between themselves, which can then be confirmed by the court. If they cannot agree, the court can make the necessary order for the ancillary relief, which will include one or more of:

- a lump sum payment from one party to the other
- a lump sum payment for any children
- periodic maintenance payments from one party to the other
- periodic maintenance payments for any children
- the transfer of property from one partner to the other
- the sale of property (for example, investments or the family home)
- a share in a pension fund

Divorce and children

When a relationship ends in divorce, the welfare of any children involved is paramount, as is reflected in the Children Act 1989.

During what is likely to be a difficult and stressful time, most parents would ideally wish to put their differences aside to agree about arrangements for their children. Consulting a family solicitor should assist the process of dealing with the breakdown of a marriage and its effect upon the children.

The courts are unlikely to interfere in a voluntary arrangement, as the law considers that these are more likely to succeed than those imposed on the parties. If you and your former partner cannot agree about arrangements for your children, it is worth considering mediation before resorting to court proceedings.

If all else fails, however, it may be necessary to go to court to apply for a specific order, the most common of which are as follows:

- **Residence order:** this involves asking the court to decide upon the arrangements for where the children will live. The court can make a residence order in favour of:
 - one parent or partner. This means that the children must live with a particular parent or partner.
 - both parents. A residence order can be made for both parents, even if they do not live together. The order will specify how much time the child will live with each parent.
 - each parent or partner. Each parent or partner will have a separate order saying how much time the child will live with them.
- **Contact order:** if an absent parent is prevented from seeing, talking on the phone or writing to their children, the court can be asked to consider contact arrangements.

Orders can also be made to allow contact between the child and other relatives, such as grandparents and friends. If, for example, grandparents wish to apply, they will first have to seek the permission of the Court.

Any proceedings involving children are likely to be stressful and emotionally demanding, but your solicitor can help you by providing practical, professional advice that is designed to help you reach a solution that is in your children's best interests.



Even if you feel that you have no alternative but to go to court, the experience of a family solicitor may help to settle the problem before it goes that far.

Although your marriage or relationship may have ended, you will continue to be a parent with your ex-partner for the rest of your life. This issue should be borne in mind before or during any proceedings.

Although it may be difficult, exploring every possible way to work with your ex-partner to make joint decisions about your children – with your solicitor or perhaps through mediation – is a hugely important step in protecting them from the worst anxieties and anger of divorce or dissolution, and ensuring that they continue to have a loving relationship with both parents.

Separation

Some couples may wish to separate without divorcing and there are several ways to do this legally and for tax and state benefit purposes.

Separation usually involves living apart, but you can live in the same property and still be separated if you no longer sleep and eat together or do any domestic chores, such as ironing or washing, for each other. If you decide to separate, you can:

- live separately and apart without any agreement relating to children, money, property or other issues
- live separately and apart, putting your agreement on children, money, property and other issues into a document called a deed of separation, which you should get a solicitor to prepare
- sign a legal document, incorporating the deed of separation. This is called a separation agreement and is not legally binding
- a judicial separation (or separation order for civil partnerships). This is a court order, and virtually the same as a divorce, but the partners cannot marry anyone else nor obtain a final financial order dismissing all claims against each other (a “clean break”). If the partners decide at a later date that they want to divorce, they will still have to go through the divorce process.

Working with your solicitor

Whether you are divorcing or separating, your solicitor's job is to look after your best interests, and those of your children; giving you practical, professional advice that is focused on what is best for you and your circumstances.

While seeking legal advice may be a new experience for you, at what is a potentially difficult time, obtaining such advice promptly will almost certainly save you time, money and anxiety.

To find out more about how we can help you, please contact us:

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