

## **HIGGINS MILLER SOLICITORS**

### **DIVORCE**

The person who starts the divorce is called the Petitioner. Their spouse is the Respondent. In order to obtain a divorce the parties have to have been married for at least one year and the Petitioner has to prove to the Court that the marriage has broken down irretrievably.

To prove that the marriage has broken down irretrievably, the Petitioner has to prove one of the following five facts:

- a) The Respondent has committed adultery and the Petitioner finds that it is intolerable to live with the Respondent. This requires “sexual intercourse” within the last six months. This is proved either by admission or other evidence.
- b) The Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. This is subjective and can usually be found in any marriage.
- c) The Respondent has deserted the Petitioner for a continuous period of at least two years immediately before the start of the divorce. In practice desertion is difficult to prove and is rarely used.
- d) That the Petitioner and the Respondent have lived apart for a continuous period of at least two years before the start of the divorce and the Respondent consents to the divorce. This is a “no fault” ground. It requires the Respondents signature to confirm consent.
- e) The Petitioner and the Respondent have lived apart for a continuous period of at least five years immediately before the start of the divorce. This is a “no fault” ground

The divorce is started by the Petitioner preparing a divorce petition setting out details of the marriage and the grounds of divorce. Prior to starting the divorce it is good practice for the Petitioner, through his or her solicitors to try and agree the grounds of divorce and contents of the divorce petition with the Respondent.

The divorce is started by the Petition being lodged with the Court. Also required is the marriage certificate (or a certified copy of it) and payment of the Court fee. In certain circumstances some, or all, of the Court fee can be waived depending upon the Petitioner’s financial circumstances.

Once the Court has received the divorce documentation from the Petitioner it sets about issuing the divorce. This takes up to two weeks. The Court will then arrange for a sealed copy of the divorce petition to be sent to the Respondent together with a form called the Acknowledgment of Service.

Upon receipt of these documents from the Court the Respondent should complete the Acknowledgment of Service within eight days, confirming receipt of the papers, and

- a) In the case of an adultery petition, whether they admit the adultery alleged.
- b) In the case of the behaviour petition, whether they intend to defend the divorce.

- c) In the case of the desertion petition, whether desertion is admitted.
- d) In the case of a two years' separation petition whether they consent to the divorce.
- e) In the case of five years' separation petition whether they admit the separation.

If the Respondent indicates that he or she intends to defend the divorce, they must file an answer to the petition with the Court and pay a court fee within twenty-nine days of receiving the divorce papers. At this time, the Respondent may also choose to issue their own divorce petition alleging that the marriage has broken down for alternative reasons. This is called a cross-petition.

Defended divorces do not occur very often, and as Legal Aid is not available to defend a divorce they can be expensive and drawn out. When a divorce is defended the Court usually arranges a hearing to give procedural directions setting out the steps that need to be taken in order to progress the divorce.

Where the Respondent in his or her Acknowledgment of Service states that they admit the adultery, do not intend to defend the allegation of unreasonable behaviour, admit desertion of two years or more, consent to a two year separation divorce or admit to separation for five years, the divorce can proceed on an undefended basis.

The Petitioner is then required to complete an application for decree nisi and a statement in support, confirming that the contents of the divorce papers are true. These further forms are lodged with the Court and considered by the Judge. He or she may raise questions about the divorce. Until these matters are addressed the divorce cannot proceed.

If the Judge is satisfied with the contents of all of the divorce papers, he or she will fix a date for pronouncement for the decree nisi of divorce.

Generally a divorce cannot be progressed on an undefended basis until the Respondent has returned the Acknowledgment of Service as set out above. However, where the petition is based on unreasonable behaviour or five years' separation and ignored by the Respondent the Petitioner can progress it once he or she has satisfied a Judge that the Respondent has received the divorce papers but chosen to ignore them. Often this means arranging to have the papers personally delivered to the Respondent by a Court Bailiff or Process Server. However, sometimes after receipt of the divorce papers from the Court the Respondent will say or do something that clearly proves that he or she has received the divorce papers. In these circumstances, the Judge will consider a statement sworn by the Petitioner setting out the reasons why he or she believes that the divorce papers have been served and if the Judge is satisfied with the contents of that statement will sign a certificate confirming that he or she is satisfied thereby allowing divorce to proceed on an undefended basis, the Petitioner then lodging the application for decree nisi outlined above.

The decree nisi of divorce is pronounced in Court. Although the parties can attend, there is no requirement to do so. In practice a number of decree nisis will be pronounced at the same time.

If the Petitioner has requested the Respondent to pay their costs associated with the divorce and the Respondent objects to this, the Respondent should attend the hearing of the decree nisi in order to explain those objections to the Judge.

Once the decree nisi of divorce has been pronounced the parties remain married. Six weeks and one day after the decree nisi has been pronounced the Petitioner can apply for the decree absolute. This is the final decree in the divorce proceedings and has the immediate effect of ending the marriage. Sometimes a Petitioner will be advised by their solicitors not to apply for the decree absolute until such time as the financial issues between the parties have been resolved.

If the Petitioner applies for the decree absolute within twelve months of the decree nisi having been granted the application is granted immediately by the Court. If more than twelve months have elapsed the Petitioner must first of all ask permission of the Court for the decree absolute to be pronounced by signing and lodging a statement.

If the Petitioner does not apply for the decree absolute when first able, the Respondent can apply for it three months later, this will involve a hearing with the Court having to determine whether or not it is appropriate to grant the decree absolute at that time.

A straightforward undefended divorce should take approximately six months to conclude. That time estimate can be extended because of a number of factors, including delay by the parties or backlog of work at the Court.

You may want to regularise your separation without divorcing. This can be done in one of two ways:

- Judicial Separation, this is done through the court. The grounds and procedure are the same as for divorce but instead of a decree nisi you receive a decree of judicial separation. This concludes the process and you and your spouse remain married.
- Separation Deed, this is a written contract between spouses confirming the arrangements for separation without involving the court.