

## HIGGINS MILLER SOLICITORS

### DISSOLUTION OF CIVIL PARTNERSHIP

The person who starts the dissolution is called the Petitioner. Their partner is the Respondent. In order to obtain a dissolution the parties have to have been in a civil partnership for at least one year and the Petitioner has to prove to the Court that the civil partnership has broken down irretrievably.

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

- a) 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 civil partnership.
- b) The Respondent has deserted the Petitioner for a continuous period of at least two years immediately before the start of the dissolution. In practice desertion is difficult to prove and is rarely used.
- c) That the Petitioner and the Respondent have lived apart for a continuous period of at least two years before the start of the dissolution and the Respondent consents to the dissolution. This is a “no fault” ground. It requires the Respondents signature to confirm consent.
- d) The Petitioner and the Respondent have lived apart for a continuous period of at least five years immediately before the start of the dissolution. This is a “no fault” ground

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

The dissolution is started by the Petition being lodged with the Court. Also required is the certificate of civil partnership (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 documentation from the Petitioner it sets about issuing the dissolution proceedings. This takes upto two weeks. The Court will then arrange for a sealed copy of the dissolution 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 the behaviour petition, whether they intend to defend the dissolution.
- b) In the case of the desertion petition, whether desertion is admitted.

- c) In the case of a two years' separation petition whether they consent to the dissolution.
- d) 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 dissolution, they must file an answer to the petition with the Court and pay a court fee within twenty-nine days of receiving the dissolution papers. At this time, the Respondent may also choose to issue their own dissolution petition alleging that the civil partnership has broken down for alternative reasons. This is called a cross-petition.

Defended dissolutions do not occur very often, and as Legal Aid is not available to defend a dissolution they can be expensive and drawn out. When a dissolution 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 dissolution.

Where the Respondent in his or her Acknowledgment of Service states that they 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 dissolution can proceed on an undefended basis.

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

If the Judge is satisfied with the contents of all of the dissolution papers, he or she will fix a date for pronouncement for the conditional order of dissolution.

Generally a dissolution 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 dissolution 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 dissolution papers from the Court the Respondent will say or do something that clearly proves that he or she has received the dissolution 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 dissolution 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 conditional order application outlined above.

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

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

Once the conditional order has been pronounced the parties remain in a civil partnership. Six weeks and one day after the conditional order has been pronounced the Petitioner can apply for the final order. This final order in the dissolution proceedings and has the immediate effect of ending the civil partnership. Sometimes a Petitioner will be advised by their solicitors not to apply for the final order until such time as the financial issues between the parties have been resolved.

If the Petitioner applies for the final order within twelve months of the conditional order 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 a statement.

If the Petitioner does not apply for the final order 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 final order at that time.

A straightforward undefended dissolution 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 a dissolution This can be done by a Separation Deed, this is a written contract between the parties confirming the arrangements for separation without involving the court.