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FAMILY LAW SERVICE

LEAFLET NO.1 – CURRENT DIVORCE PROCEDURE

Getting a divorce is usually easy - particularly if both agree the marriage is over. It is usually harder to sort out the practical problems such as when to separate, where to live, what is best for the children and any money matters.

You will probably be thinking about those questions and the divorce process may seem unimportant and blurred. This leaflet outlines the divorce process, the key points and the likely timetable.

Who can start a divorce?

Anyone who has been married a year or more, provided at least one of you has been living in England and Wales for the preceding year. It does not matter where you married.

On what grounds can we divorce?

The only ground for divorce is that the marriage has irretrievably broken down. A divorce will only be granted if you can also show one of five 'facts' laid down by the law as proof of the breakdown.

What are the 'facts' that prove the breakdown?

- Your spouse has committed adultery and you find it intolerable to continue living together; or
- Your spouse has behaved in such a way that it is unreasonable to expect you to continue living together; or
- Your spouse has deserted you for a continuous period of two years or more; or
- You have been living separately for two years or more and your spouse agrees to a divorce; or
- You have been living separately for five years or more, whether or not your spouse agrees to a divorce.

How should I start?

This depends upon your circumstances. It is often wise to try to obtain agreement to the contents of the petition. This can simplify matters later and avoid causing unnecessary problems.

How long will it take?

This depends on how quickly the court deals with your case and how co-operative everyone is. In Stafford County Court, a straightforward undefended divorce should take around six months from the date of issue of the divorce petition. It should be noted that some other courts are much slower than this.

What does a divorce petition look like?

Every petition follows a standard form. It contains basic information about you and any children and a statement that the marriage has irretrievably broken down. It will also state your 'fact' and include a request for a divorce. It may also include a request for an order about the children; a claim regarding the divorce costs and for financial provision.

What about the children?

A form is sent to the Court with the petition with your suggested arrangements for the children. This (the Statement of Arrangements') is completed by the person filing the petition. The law encourages you to try and agree those arrangements. Preferably the form should be sent to the other party for agreement before it is sent to the Court. If agreement is not reached, this does not prevent the divorce from proceeding.

How much does a divorce cost?

Those who are on a low income or state benefit may be able to get help under the Legal Help scheme. Those who are not should ask for an estimate of the likely costs. We always provide a written estimate of costs at the beginning of the case. If you have to pay Court fees, these are now £340 in total.

Must financial matters be dealt with before the divorce is finalised?

You do not need to agree financial matters before the divorce is final. Discussions are often only in the early stages if finances are complicated. It should be possible to solve immediate problems and make temporary maintenance arrangements by this stage.

Are the proceedings public?

Family proceedings are usually held in private. This means that the public and press are not allowed to see the Court papers. Although the press can publish the fact that a divorce has been pronounced,

the information that may be disclosed is limited. They may give the 'fact' but not details of the adultery or behaviour.

Timetable for divorce

1. After one year of marriage

Either spouse may start the divorce. He or she is called the 'Petitioner'. The completed documents are sent to the Court with the original marriage certificate. A fee, currently £300 (from 10th January 2006) is paid unless the Petitioner is covered by the Legal Help scheme.

2. Within a few days of receipt by the Court

The Court posts a copy of the documents to the other spouse who is called the 'Respondent'. A copy of the petition is also sent to anyone named in an adultery petition. That person is called the 'Co-respondent'. If the Respondent (or Co-respondent) has instructed Solicitors, the document may be sent to them instead.

3. The Respondent has strict time limits to observe

(a) Within 8 days he or she should send to the Court a form called an acknowledgment which the Court supplied. This asks whether it is intended to defend the petition, whether any claim for costs is disputed and whether orders affecting the children are sought.

(b) Within 29 days of receipt (longer if the documents have to be sent to an address abroad) Whether or not an acknowledgment has been filed, the Respondent must, if he or she intends to defend the petition, file a Defence (called an 'Answer'). The petition then becomes defended and the procedure outlined below does not apply. Defended proceedings resulting in a contested hearing are very rare. However, a delay in finalising the divorce is inevitable.

4. Within a few days of receiving the acknowledgment of service

The Court sends to the Petitioner's Solicitor a copy of the form(s).

5. If the Respondent is not defending, the Petitioner can apply for the Decree Nisi

The Petitioner's solicitor prepares an Affidavit for the Petitioner

saying that the contents of the petition are true. It will also say whether any details have changed since the filing of the petition. This is sworn before a solicitor or other Court Official and is sent to the Court with a request for the Court to examine the papers.

6. If acknowledgments(s) of service are not returned to the Court?

Proof that the Respondent and any Co-respondent have received the petition will have to be obtained. This may involve arranging for someone to deliver a copy personally or, rarely, asking the Court to order that such proof does not need to be given.

7. On receipt by the Court of the Affidavit and request

The Court examines the papers and, if they seem in order, issues a certificate that the Petitioner is entitled to a divorce and fixes a date for the Decree Nisi to be pronounced. Both the Petitioner and Respondent (through their Solicitors) are advised of the date fixed for Decree Nisi. This is usually a few weeks after the application is lodged. No one usually has to attend.

8. What normally happens about the children?

If the papers show that agreement has been reached, the Court is unlikely to interfere. Otherwise, the Court may ask the parties (normally unaccompanied by their Solicitors) to attend an informal appointment (called a 'Children Appointment') to consider the difficulties. The Judge may also ask for a CAFCASS (Children and Family Court Advisory and Support Services) Officer to become involved. If the Judge is not satisfied, this can delay the final decree of divorce.

9. If the Court is satisfied about the arrangements for the children

(a) six weeks and one day after the date of Decree Nisi - the Petitioner may apply for the final decree ('Decree Absolute') by sending the appropriate form to the Court. This is not automatic. Unless covered by the Legal Help scheme a further fee will be payable. This is currently £40 (from 10th January 2006). The Decree Absolute will then be processed and may be available the same day. In many cases, it will be sensible to delay application until financial matters have been dealt disposed of.

(b) three months after the Petitioner could first have applied for Decree Absolute - the Respondent may apply for the Decree Absolute if the Petitioner has not already done so.

What if I change my mind?

If you are the Petitioner and wish to halt the proceedings, then this can generally be done at any time up to Decree Absolute. After Decree Absolute it is too late to change your mind.

NOTE: The above is intended as a general guide for your information. It is NOT intended as a substitute for proper legal advice. Each case is different and advice cannot be given without a proper analysis of your own circumstances.
