

## Guide to divorce: major aspects

### Starting proceedings

There is only one ground for divorce and that is that the marriage has irretrievably broken down. The person starting divorce proceedings is called the 'Petitioner' and their spouse the 'Respondent'. To satisfy the court that an irretrievable breakdown has occurred, you (as the Petitioner) have to establish one of 5 facts:

- Respondent has committed adultery with another person and that the Petitioner finds it intolerable to continue living with the Respondent.
- Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to continue living with the Respondent.
- Respondent has deserted the Petitioner for a continuous period of at least two years prior to commencing divorce proceedings.
- The Petitioner and the Respondent have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition and the Respondent consents to the divorce.
- The Petitioner and the Respondent have lived apart for a continuous period of at least 5 years preceding the presentation of the Petition.

It is not necessary to name the person with whom the adultery took place but for adultery to be relied upon it must have occurred within 6 months prior to or following the date of separation. Unreasonable behaviour is viewed by the court as behaviour which a particular Petitioner finds intolerable.

To start divorce proceedings, a Divorce Petition must be lodged with the County Court for a payment of £180.00. In addition, the court fee for the Decree Absolute (the final decree ending the marriage) is £30.00.

It is normal for divorce proceedings to take 6 months from issuing the Petition to applying for the Decree Absolute and often longer where financial issues need to be resolved. Where both parties are able to reach an amicable agreement as to the division of the assets, a final settlement can be achieved and implemented without too much delay. If matters are unable to be resolved, it is then necessary to apply for the court's assistance – this will take longer than where agreement has been reached between the parties. The fee to issue an application at court to resolve financial matters is £120.00.

When the Petition is lodged with the Court the Court will require confirmation of the intended arrangements for the children. In addition, the Court will require the original marriage certificate, or, if you are unable to locate the original, a certified copy can be obtained from the Church or Register Office where you were married and a small fee will be payable.

### Financial issues

The Court will take into consideration the following factors when considering the best way to resolve financial issues between parties: -

First consideration will be given to the welfare of any minor children of the family who have not attained the age of 18.

- Your income, earning capacity, property and any other financial resources which you may have or are likely to have in the foreseeable future and those of your husband/wife.
- Your financial needs, obligations and responsibilities (now or foreseeable future) and those of your spouse.
- Standard of living enjoyed by you and your spouse prior to the marriage breakdown.
- Duration of the marriage, age of each spouse.
- Any physical or mental disability you or your spouse may have.
- Contributions you and your spouse have made or are likely to make in the future towards the welfare of the family. This can include contributions by way of looking after the home and/or caring for the family.
- The court may consider the conduct of one of you if to ignore it would be unjust to the other party. Only in exceptional circumstances will conduct be raised within financial proceedings.
- The court will also consider the value to you or your spouse of any benefit (for example a pension), which you may now lose the chance of acquiring due to the dissolution or annulment of the marriage.

The above carry equal importance in the eyes of the Court and the way in which the Court applies these factors will vary according to the circumstances of each case.

#### **Financial claims**

It is important for you to be aware that you have rights both as a spouse and as a former spouse to make a claim against your husband/wife, and vice versa. It is possible to obtain the following relief:

- Maintenance
- Adjustment of property ownership
- Lump sum payments
- Pension orders

These rights can be formalised and brought to an end by way of a consent order. It may not be necessary to go to court if a settlement can be embodied in a consent order which can be filed at the court for the court's approval. If you and your spouse do not wish to resolve financial matters it is possible to request that the court makes an order dismissing any future claims which either of you may have. If such an order is not obtained this leaves matters open and there is the possibility that one of you may make a financial claim against the other at some point in the future.

Any settlement reached will be subject to full and frank disclosure of assets from both sides.

#### **Re-marriage**

If you and your spouse fail to formalise your finances in the form of a court order and the respondent subsequently decides to remarry, he/she will not be entitled to bring a financial claim against the petitioner unless he/she has already made an application to the court for a financial order before they remarry. This is known as the 'respondent re-marriage trap'. To discuss this in more detail contact a specialist family lawyer – see contact details at the end of this article.

### **Jointly owned property**

If you hold a jointly owned property there are two ways in which you and your husband/wife may be holding that property. Firstly, you may be 'joint tenants'. This means that in the event of one of you dying, the survivor will be entitled to the whole of the property (even if you have commenced divorce proceedings or are in fact divorced) and irrespective of any provision you may have made in a will and if no will has been made irrespective of the rules of intestacy.

You can prevent this by preparing a 'Notice of Severance', which can be signed by you and your spouse and lodged at the Land Registry. Even if only one of you signs the Notice this will be sufficient to ensure that the property will be held as 'Tenants in Common'. In the event of your dying before your spouse, your share in the property will pass automatically in accordance with your will or under the rules of intestacy in the event that you have no valid will. Therefore, it will be necessary for you to prepare a Notice of Severance and a will to prevent your spouse becoming entitled to your share in the property in the event of your death. We can prepare the Notice for you.

### **Contact**

For more information contact our Family team.

*The information contained in this article is based on the law at October 2004.*