

Beck Fitzgerald

lawyers & consultants

The divorce process



*working for
accessible justice*

How does the process start?

To apply for a divorce you must have been married for at least a year. It doesn't matter where in the world you were married but you can only apply for a divorce in England and Wales if either you or your spouse meets certain resident conditions or are domiciled here. We will speak to you about this to ensure the necessary conditions are met.

The divorce process is generally administrative. This means that it is most unlikely that you will need to go to court and your divorce will usually be agreed by a Judge based on the paperwork. The process is relatively simple as long as a divorce isn't defended. Defended divorces are very rare.

If you and your spouse are not in agreement regarding arrangements for children and finances these will be dealt with separately. The chart below shows how issues concerning finances and property and children run alongside but are dealt with separately to the divorce process itself.

The document that starts the divorce is called a petition and the person who starts the divorce is called the Petitioner. The law in this country still requires one spouse to petition against the other even if both of you agree there should be a divorce. Your marriage certificate will be required and there is a court fee to pay of £550. The petition is a form which gives the

court information about you and your spouse and tells the court that you feel the marriage has irretrievably broken down.

You need to set out evidence that the marriage has broken down by supplying certain details in one of the following five categories.

- That your spouse has committed adultery (this category is not available to same sex couples);
- That your spouse has behaved unreasonably;
- That your spouse has deserted you for two years;
- That you have lived apart for two years and your spouse consents to the divorce; or
- That you have lived apart for five years.

For the purpose of any financial or arrangements for children that need to be made it doesn't matter in most cases who starts the divorce and why. You can ask the court to make orders about money and children during or after the divorce. These legal processes are completely separate from the divorce itself.

Agreeing the Contents of the Petition

It is best practice to send a draft copy of the petition to the other spouse before its filed at court in order to encourage a cooperative approach. We will advise you further on how best to work together to preserve mutual respect and dignity throughout the process.

Filing the Petition

The petition is filed at court with the court fee and your original marriage certificate.

Serving the Divorce Papers

The court sends the petition out to (serves) the Respondent together with a form for them to fill in called the Acknowledgement of Service form. In this form the Respondent has to say whether or not they intend to defend the divorce. The form has to be returned to court. If the Respondent has no intention to defend the divorce then that is the end of their part in the process and all further steps are taken by the Petitioner at their own pace.

Application for the Decree Nisi

The next step is for the Petitioner to complete the statement in support of the petition. This is another form that states that the contents of the petition are true and asks for certain technical legal details such as whether you have lived in the same household since a certain relevant date. It is important to

remember that the statement of truth is signed at this stage and it is vital that all the facts are accurate. We will then file this statement at court with an application for a decree nisi.

The decree nisi is the second to last phase of the divorce. It means that the court has agreed that you are entitled to a divorce but that it has not yet been made final. After the court has received your application for a decree nisi a Judge will look at your papers to make sure they fulfill the legal criteria and if they do the Judge will issue a certificate telling you when the decree nisi will be pronounced.

Decree nisi is pronounced in open court. This means that the Judge reads out a list of names of people whose divorces have got to this stage this week. Although anyone can go along if they want to you do not need to attend court when this happens.

At any time after decree nisi, the court is able to make a binding financial order setting out your arrangements for finances and property on divorce, either by consent or as a result of separate court proceedings. It will not do so unless you ask it to or your separate financial court proceedings have come to a conclusion. It is very important that you consider your finances at this stage and speak to us about them if you have not already done so.

Finalising the Divorce

Six weeks and one day after the grant of decree nisi, the Petitioner can apply for the decree absolute which formally ends the marriage.

Not everyone should apply for decree absolute as soon as it is available and we will discuss with you whether or not you should do so. It may not be sensible to apply immediately if, for example, financial arrangements are not yet settled. In some cases the granted decree absolute prevents certain types of application being made.

However, if the Respondent is keen to end the marriage and the Petitioner has not applied for the decree absolute the Respondent can ask the court for permission to do so after a certain period of time (about 4½ months from decree nisi). The court will usually grant such an application unless there are particularly pressing reasons not to do so.

How long will my Divorce take?

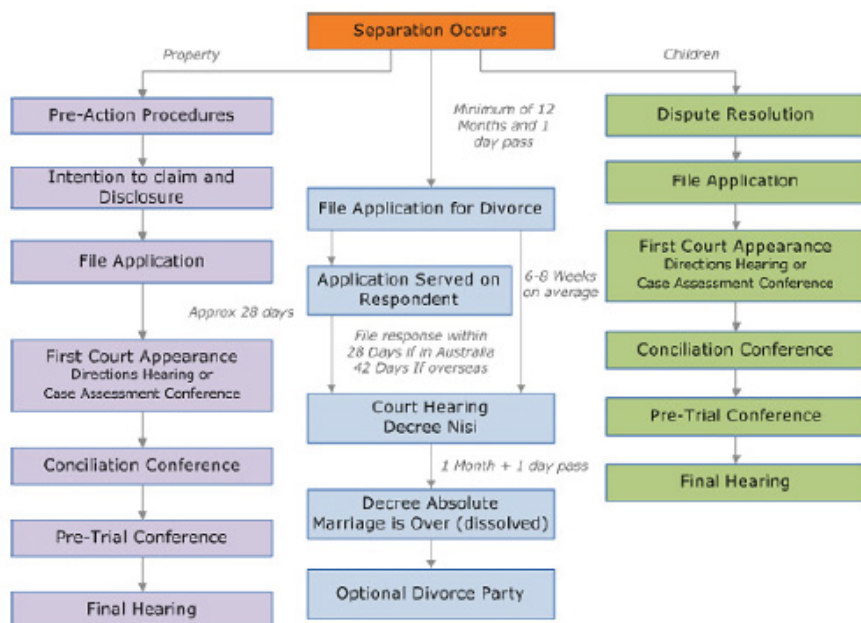
Each step of the divorce is taken promptly and financial arrangements do not hold things up. The divorce process usually takes between 4 to 6 months.

Other arrangements in relation to finances and children may take longer to resolve.

Implications in relation to your Will

It is important to note that divorce means that certain provisions in your will do not work as you might have intended them to. You will need to make a new will quickly after decree absolute (or in contemplation of divorce) to ensure that your wishes are carried out in the event of your death. We can help you put in place an emergency will so do speak to us about this service.

Although each individual case may differ, the chart below gives an indication of the process:



For more information please contact us on:

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