

DIVORCE and JUDICIAL SEPARATION

DIVORCE

If your marriage has permanently broken down, you can apply to the court for a divorce.

The court will only grant you a divorce if:

You and your husband/wife have been lawfully married for a least a year

Your marriage has 'broken down irretrievably' because of one or more of 5 facts.

The 5 facts are:

Adultery - your husband/wife has had sex with someone of the opposite gender and you no longer want to live with them because of that.

Unreasonable behaviour – your husband/wife has behaved so badly that you no longer want to live with them.

Desertion – your husband/wife has left you for more than 2 years without your agreement, without a good reason, and in order to end your relationship.

You have lived apart for more than 2 years – your husband/wife must agree to the divorce in writing if you are going to rely on this reason.

You have lived apart for more than 5 years – your husband/wife does not have to agree to the divorce if you are going to rely on this reason.

A divorce starts when a husband/wife sends an application (a 'divorce petition') and other documents to the court and pays the court fee. The person who asks the court for the divorce is called 'the petitioner' and the petitioner's husband/wife is called 'the respondent.'

Once the court has processed the petition, it sends it and other paperwork to the respondent.

Some of that paperwork needs to be filled in by the respondent and sent back to the court.

That will let the court know whether the respondent is agreeing to the divorce or not.

Once the court has received the paperwork from the respondent, it will write to you and ask you what you want to do. If you are certain that you want to divorce your husband/wife, you

send the court a form, asking for a judge to consider your case.

If the judge is satisfied that the paperwork is in order, he/she will set a date when the court will deal with the first stage of the divorce ('the pronouncement of decree nisi'). Neither you nor your husband/wife will need to attend court on that occasion unless the court tells you that you should do so.

Six weeks and 1 day after the pronouncement of decree nisi, you can ask the court to end your marriage ('grant decree absolute'). The judge will consider the paperwork and will grant decree absolute without you having to attend court. Until the court has granted you a decree absolute, you are still married to your husband/wife.

Because the granting of a decree absolute can have a significant effect on your financial position and on any will that you have written, you might want to talk about that to someone legally qualified to make sure that neither you nor your family lose out.

These days, it is very unusual for a respondent not to agree to a divorce. If your husband/wife does not agree, the court will ask you both to come and speak to a judge so that he/she can decide how your case should be dealt with.

If you are the respondent, you should think very carefully before objecting to a divorce. Even if you do not agree to the divorce, it is still very likely that the court will eventually grant it. If it does and you have opposed the divorce (or even just not co-operated with the court), you might be ordered to pay the costs of the case and these can be substantial.

JUDICIAL SEPARATION

In certain circumstances, a husband or wife might ask the court for a judicial separation instead of a divorce. A judicial separation allows you and your husband/wife to live apart without

suffering any legal consequences but you will still be married to one another.

Judicial separations are rare these days but might be appropriate where:

There are religious reasons that prevent you from asking for a divorce.

You have been married for less than a year.

Asking the court for a judicial separation is a lot like asking for a divorce. You have to send the court the correct paperwork and pay a court fee. You will need to show that you are entitled to a judicial separation because of one or more of the 5 facts applies to your just as if you were asking for a divorce. Just like a divorce, the court will need to hear what your husband/wife has to say before it grants you a judicial separation.

Members of the family team at 12 College Place understand how difficult it can be for someone without legal training to navigate their way round the legal system. We all specialise in family law and have lots of experience of helping our clients make the right decisions about these complex issues. We can discuss your case with you, talk through the options, and guide you through your court case. Remember: we are here to help.