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## **Divorce: A Guide to Separation and Divorce**

## A guide to Separation and Divorce

The process of divorce and separation can be a complex and emotional experience that will see you make unprecedented decisions regarding your finances, children and assets. We can provide you with the help and assistance you need to navigate your way through. This guide will take you through the main factors to consider when going through the difficult process of separation and divorce.

### What is the legal basis for getting divorced?

In order to get a divorce, you must firstly show that you have been married for 12 months in England and Wales (or two years in Northern Ireland) and that the marriage has irretrievably broken down for one or more of the following reasons:

- Adultery
- Unreasonable behaviour
- Your partner has deserted you for at least two years
- You have been separated for at least two years, and you both agree to the divorce
- You have been separated for at least five years, with no need for your partner to agree to the divorce.

### What is the procedure?

To start the formal process of divorce, you must apply to your local family court with a document called the 'Divorce Petition'. The court will then respond by sending this document to your spouse, who in turn must send back an 'Acknowledgement of Service' form to the court. You are then permitted to apply for the 'Decree Nisi', which is confirmation that the statutory criteria for a divorce have been met. After six weeks, you can apply for the 'Decree Absolute', which is the final court order formally ending your marriage.

This process usually takes between eight and ten months, but can vary depending on individual circumstances and any financial claims which need to be settled or disputes which may arise.

### Who pays for the divorce costs and will I have to attend court?

The court can order the respondent of a divorce petition to pay the costs of divorce. However, it is open for parties to decide themselves by making reference to this during the 'Acknowledgment of Service' stage. Attending court is very unlikely. The majority of cases are dealt with in writing, with no requirement to attend court in person.

### What is Judicial Separation?

It is a similar process to divorce but you remain legally married. It is used if you have been married for less than a year or there are religious objections to divorce.

### What is a Separation Agreement?

With the growing acceptance of divorce proceedings in recent years, a Separation Agreement is becoming less common. This is a process whereby you formalise your separation and includes details such as financial support and living arrangements for children. You remain married and cannot re-marry until you go through the divorce process.

## **Am I entitled to financial support?**

This can depend on a number of factors such as how long you have been married, whether you have dependent children and your future earning capacity. All your circumstances will be taken into consideration. One of our family law experts would be happy to advise you in this area.

Financial matters are dealt with only after the divorce petition has been filed at court. They will be addressed alongside divorce proceedings but separately. Parties should try to resolve these claims before a final divorce decree is granted.

## **What about personal possessions?**

We advise that spouses should try to agree how to divide personal property. Where the items are of significant value (i.e. jewellery, art and antiques), they are often negotiated with the help of a lawyer as the value of these assets may be a significant percentage of the marital estate.

## **What about the family home?**

We will consider your individual circumstances and advise on the best way to proceed, keeping what is in the best interests of the children as the most important factor. We will advise on the best way to resolve issues over the family home as well as any other financial and property matters.

## **Is the maintenance of children dealt with by the court?**

The court isn't usually involved in assessing maintenance payable to children. The Child Maintenance Service now deals with most applications for child maintenance that cannot be agreed, and they use a formula to assess the level of maintenance payable. The court though will still deal with issues of capital paid for a child's benefit.

Deciding upon financial arrangements, especially when children are involved, can be a complex area and again we can assist in this matter.

## **How does the court deal with disputes about children?**

Generally speaking, parents usually come to a decision about the welfare of their children outside of court. However, if the parents cannot agree, the court will decide.

The court's primary concern will be that of the children and a new Child Arrangements Programme was introduced on the 22 April 2014 to help parents try to resolve any disputes over where a child should live or who a child should see.

It is very unlikely that children will have to attend court even if disputes arise. For example, in England, the interests of the children are represented at court by the Children and Family Court Advisory and Support Service.

## **What next?**

There are other factors to consider when considering a separation. Family Mediation and Collaborative Law are widely used now to settle disputes that arise during divorce proceedings.

We would be happy to discuss your individual circumstances and advise what is best for you. Get in touch today by emailing [family@grantsaw.com](mailto:family@grantsaw.com) or contacting the Family department on 020 8858 6971.

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