



Information on divorce

Sadly, many marriages end in separation or divorce. Firstly, you cannot issue divorce proceedings unless you have been married for over one year. One party to the marriage must also either be domiciled or resident in England and Wales.

Grounds for divorce

The only ground for divorce is that the marriage has irretrievably broken down. The person applying for the divorce (the Petitioner) has to prove that the marriage has irretrievably broken down by establishing the existence of one of the following five facts:-

1. That the other spouse in the proceedings (the Respondent) has committed adultery
2. That the Respondent has behaved unreasonably and that the Petitioner cannot reasonably be expected to live with the Respondent
3. That the Respondent has deserted the Petitioner for at least two years before filing the Divorce Petition at court
4. That the Petitioner and Respondent have lived apart for a continuous period of at least two years before filing the Divorce Petition at court (and the Respondent consents to the divorce)
5. That the Petitioner and respondent have lived apart for at least five years before filing the Divorce Petition at court (consent by the Respondent is not required)

Divorce Proceedings

Divorce proceedings start by completing a Divorce Petition relying on one of the above facts and sending this to Court along with the original or certified copy of the marriage certificate and a court fee.

Once the Court has issued the divorce petition, it will send the Petitioner confirmation of the date it was issued and when they sent the divorce documentation to the Respondent. The documentation includes a blank Acknowledger of Service form. The Respondent must complete and return the Acknowledgement of Service form within a specified time limit (usually 14 days).

Once the Acknowledgement of Service form has been returned by the Respondent, the Petitioner can then complete documents called a Statement in Support of the Divorce and an application for the Decree Nisi, which is then sent to Court. The Court will consider all of the divorce documentation that has been filed to date and decide whether or not the Petitioner should be entitled to a divorce. If the Petitioner is successful with their application then the Court will send the Petitioner and Respondent a certificate, which includes a date for when the Decree Nisi will be granted. This is the first of two Decrees but it does not mean you are legally divorced at this stage.

Once the Decree Nisi has been granted, the Petitioner has to wait for a period of six weeks before they can apply for the Decree Absolute. The Decree Absolute will be the final decree dissolving the marriage so that you are legally divorced.

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If the Petitioner does not apply for the Decree Absolute then the Respondent can apply for it after a further three months have elapsed from the earliest date that the Petitioner could apply.

Commonly asked questions

Q. How much will it cost and who pays?

A. Our charges will be based on the time that we spend on your matter. There is therefore no set cost for divorce proceedings. We will give you an estimate of the costs including details of the court fees at your first appointment. If the divorce petition is based on Adultery, Unreasonable Behaviour or 2 Years Desertion, then the Petitioner has an Argument to ask the Respondent to pay the fees. The fees could be shared equally if the divorce petition is based on 2 or 5 years separation. However every case is different and ultimately it is up to both parties to try and agree who pays the fees and this is an area that can be negotiated.

Q. How long will it take?

A. Where the parties co-operate and the matter proceeds smoothly the divorce is usually concluded within four to six months. Often, however, where there are matrimonial finances to resolve the Decree Absolute is not applied for until there has been a financial settlement. This could take up to 12 months or longer depending on the case.

Q. What if the Respondent does not return the Acknowledgement of Service form?

A. The court needs to be satisfied that the Respondent has received the divorce papers. If the Respondent does not return the Acknowledgement of Service form within the time stipulated then a bailiff or a process server can be instructed to serve the Respondent personally. There are other ways of serving the Respondent but applications have to be made to the Court before this can be done. Unusually, if the Respondent cannot be found then an application can be made to the Court to dispense with serving the Respondent, provided that every attempt has been made to ensure that the papers have been served upon the Respondent.

Q. What happens if the Respondent wishes to defend the divorce proceedings?

The Respondent is entitled to file a defence within a stipulated period of time. A judge will then need to hear the divorce proceedings in open court before the Decree Nisi is granted so that the judge can decide whether the divorce should proceed or not. Defended divorce proceedings are very rare as they are expensive, they cause delay and they are usually unnecessary if both parties ultimately want the divorce.

At Chafes Hague Lambert, we have an experienced family team that can guide you through divorce. To discuss your situation please contact any member of our team.

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