

Family Law Consultants

GUIDE TO

divorce and separation



FLC FAMILY LAW CONSULTANTS

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Family Law Consultants

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GOING Solo

We know that divorce can raise sensitive and personal issues and we always do our utmost to put you at ease. We are approachable and provide straight forward advice, tailored to your individual needs.

How we can help:

- Provide expert advice about the divorce process
- Start and manage your divorce proceedings through to conclusion
- Keep you informed of progress
- Send you copies of important letters and documents
- Provide you with clear information about the cost of your case at the outset



Every case is different, so it is important that you are open with us in order that we can fully understand your circumstances and advise you appropriately.

If you are at risk from domestic abuse you should inform your solicitor immediately. We will make it a priority to discuss how to keep you and any children safe.

What we will need to know:

Every case is different, so it is important that you are open with us in order that we can fully understand your circumstances and advise you appropriately. We will ask you for a variety of details and documents. These may include:

- The reasons for the separation and when it occurred.
- Details of any children who are, or have been treated as part of the family
- Current and proposed future living and contact arrangements for the family
- Details of your assets, savings, income, pensions and debts and those of your spouse (so far as they are known to you)
- Any other relevant information
- Details of any domestic abuse
- Your marriage certificate

Grounds for divorce:

In order to obtain a divorce you must have been married for at least a year. You will need to prove to the court that your marriage has irretrievably broken down because of one of the following:

- Your spouse has committed adultery
- Your spouse's behaviour is such that you cannot reasonably be expected to live with them
- Your spouse left against your wishes and you have not seen them for two years or more
- You have been separated from your spouse for two years and you both agree to being divorced
- You have been separated from your spouse for at least five years

Once we have more information from you we will be able to advise you which of the above is most suitable for you.

If the process of divorce is not suitable for you, due to religious reasons, we can advise you about other forms of separation.

The divorce process

What is often less straightforward is sorting out the practical issues, such as where each person will live, how assets are to be divided and what the arrangements for any children will be. If you and your spouse can agree on these matters between yourselves without external mediation or court action, you can save valuable time and money, although, unfortunately, we know this is not always possible.

The person applying for the divorce is known as 'the Petitioner', and the person they are divorcing is 'the Respondent'. At the start of your proceedings we will discuss writing to your spouse to tell them that you have instructed us. We will also recommend that your spouse obtains independent legal advice (if they have not done so already) as this will aid the process.

Divorce proceedings take, on average, 4-6 months, however, this can be delayed if financial matters are not agreed.

Divorce petition and acknowledgment of service

To get your proceedings underway we will start by drafting the divorce petition. The petition must set out the reasons for the breakdown of the marriage. Whilst laws have been passed to provide for "no fault" divorce, the actual process has not yet been brought into effect. The petition must therefore set out the reasons for the breakdown of the marriage. It may also contain a claim for costs, if you wish to seek to recover your legal fees of the divorce from your spouse and a claim for a financial settlement.

Once you are happy with the draft petition, we will upload it to the court online portal together with a scan of your original marriage certificate. A court fee of £593.00 is then payable to issue your petition.

We recommend providing a draft copy of the petition to your spouse or their solicitor for them to consider, before it is issued, in accordance with the good practice of the Family Law Protocol.

Once your spouse receives the issued petition from the court portal they will have 7 days to complete an acknowledgment of service, confirming to the court whether they intend to consent to or defend the divorce. Once the acknowledgment is filed with the portal and provided they are not going to contest the divorce, we will then be able to proceed to the next step of confirming the contents of the petition are true and applying for the first decree.

If your spouse does not reply to the petition or cannot be found, we will advise you as to your options, as it is usually still possible to proceed with the divorce.

Decree Nisi

Once the court is satisfied that your marriage has broken down irretrievably they will issue a certificate stating that you are entitled to be divorced. The court will allocate a date and time for the judge to pronounce the decree nisi, which is the first of 2 decrees. You will not need to attend Court unless there is a dispute about costs. The decree nisi does not mean that you are divorced. At this stage, if you and your spouse have not agreed whether they are to reimburse you your legal costs of the divorce, the judge will make the decision for you.

Decree Absolute

6 weeks and 1 day after the decree nisi is granted you can apply for the decree absolute. The decree absolute legally brings your marriage to an end. However, in most cases we recommend waiting until financial matters have been resolved because the decree absolute does not end the financial relationship between you and your spouse, so please see the section within this guide entitled 'Dealing With Finances' for more information. Each case is individual and we will advise you about the appropriate time to apply, having considered your circumstances.



CIVIL *Breakdown*

The process of ending a civil partnership is very similar to obtaining a divorce. To dissolve your partnership you will need to issue a petition proving to the court that the partnership has irretrievably broken down. To do this you will need to provide evidence of one of the following:

- ***Unreasonable behaviour***
- ***That your partner left without your consent and that they have been gone for more than 2 years***
- ***That you have been separated two years and you both consent to the dissolution***
- ***You have been separated 5 years or more***

There is no ground for adultery on the dissolution of a civil partnership. As in the case of divorce, one year must have passed from the date that you entered into your civil partnership, before you can apply to the court for a dissolution.

As with a divorce, then process takes about 4-6 months and at the end you will received a Final Dissolution Order. This final order does not end the financial relationship between you, so please see the section in this guide entitled 'Dealing With Finances'.



There is no ground for adultery on the dissolution of a civil partnership.



Talking it *Out*

MEDIATION IS AN EFFECTIVE WAY

of reaching an agreement in respect of children or finances.

It is now a legal requirement for anybody seeking to make an application to the court in respect of their matrimonial finances, or issues relating to children, to first attend a mediation assessment meeting.

There are some exceptions to this, for example, if there is documented domestic violence or if one of you lives outside of England and Wales.

Some people also find that mediation is an effective way of reach an agreement in respect of finances or issues relating to the children and it is certainly worth considering, to see if it is right for you. This is something that we can help you to arrange or you can make your own enquiries of a suitable family mediator.

If, after the initial meeting, you decide mediation is not for you, or if it breaks down part way through the process, the mediator will provide you with the relevant form to you need to pass on to us so we may make an application to the court on your behalf.

Legal aid is still available to assist those who qualify financially, with the cost of mediation. To find out if you are eligible, you would need to speak to your chosen mediator.



Show Me *The Money*

Many people believe that a divorce automatically ends the financial relationship between them and their spouse.

This is not the case.

Many people believe that a divorce automatically ends the financial relationship between them and their spouse. This is not the case. If you do not obtain a financial remedy order, either by consent, or as a result of contested court proceedings, you could be leaving yourself up to claims against your assets in the future. This could be months or even years down the line.

Even if you have no assets at the time of the divorce, you should still consider obtaining a clean break order so as to protect any assets you do acquire in the future from claims by your ex-spouse.

Sometimes the cost of obtaining a financial remedy deters people from dealing with financial matters properly, but this can turn out to be a false economy. It is likely to be much more cost effective to obtain an appropriate order at the time of your divorce than having to deal with a court application in the future. For example, assets may have increased in value or you may have paid a mortgage by yourself since separation believing the property to be yours. We have seen numerous cases in which financial relief has been sought by one party some time after the divorce and because of the increase in the value of the assets over time, a lump sum has had to be paid that would not have been ordered if matters had been dealt with properly at the time of divorce.

Also, if you were to come into some money by way of an inheritance or lottery win after your divorce but

no final financial order was made, your former spouse could have a claim on that money. Even if their claim were unsuccessful, the cost of dealing with such the proceedings is likely to be higher than if a financial remedy order had been obtained at the time of the divorce.

It is important to note that until a financial remedy order is approved by the court, either party could go back on their word.

If you are unable to reach an agreement directly between yourselves, with the help the solicitors or through mediation, you would need to make an application to the court for the matter to be dealt with by a Judge. The cost of doing this will of course be higher and contested court proceedings can take several months, but sometimes it is the only way to resolve the issues between you.

If you are the respondent within the divorce proceedings and you re-marry before finalising your financial position from your first marriage, you will be barred from making any financial application in the future. This may mean that your ex-spouse could retain matrimonial assets in their sole name, that you could otherwise have had a claim on.

Ways of Reaching an Agreement

1. Between yourselves

You and your spouse may be able to reach an agreement between yourselves in respect of how you would like to divide the income, assets, pensions etc. If this is the case we can help you formalise the agreement by incorporating it into a financial remedy order and can then submit the order, at the appropriate time to the court for approval.

However, if you reach an agreement without entering into the process of full and frank financial disclosure (see below) we will not be able to advise you whether the agreement you have reached is right for you. At the time of preparing the order you will be asked to sign a disclaimer to confirm that we have not advised you as to the appropriateness of the settlement.

The advantage of reaching an agreement in this way is that you will receive a settlement that you have both agreed is acceptable. By keeping legal work to a minimum we are able to offer you a competitive Package Fee (ask for details of our Clean Break Package).

2. Mediation

Mediation is the process of sitting down with your spouse and an independent trained mediator with a view to reaching a financial settlement that can then be drafted into a final order.

You will be asked by the mediator to gather documents demonstrating the value of your assets,

liabilities, pensions and income. These documents will be used to assist the mediation process. If an agreement is reached the mediator will draw up a "Memorandum of Understanding" setting out the details. However, this is not a legally binding documents and you would, therefore, need to provide a copy to us so we can draft it into a formal financial remedy order. We would then file the same with the court for the approval of the Judge.

3. Negotiate a Settlement with the help of your Solicitor

We can assist and advise you with regard to obtaining a suitable settlement. In order to do this, we will first need to guide you through the process of full and frank financial disclosure. This is where both you and your spouse would gather documents to demonstrate the value of your income, assets, liabilities and pensions and provide these documents to your respective solicitors. This information is then exchanged with your spouse's information, which we will go through thoroughly. Once this has been done we should then be able to advise you as to an appropriate settlement and make offers to settle in writing.

If your spouse refuses to engage in the voluntary disclosure process then we shall advise you to issue an application at court as a voluntary agreement will not be possible.

However, if disclosure does take place and if an agreement is reached, we would then incorporate this into a formal order and file it at court for the approval of the judge.

4. Court Application

If all else fails, or the other options are not suited to your particular circumstances, you can apply to the court for assistance.

It is still possible to reach an agreement at any stage, during the course of court proceedings (and this is actively encouraged), but, if no agreement is forthcoming the judge, at the final hearing will make an order, after considering all the documents and evidence.

Whatever your circumstances you can be assured that we will advise you as to which of the above methods are suitable for you and assist you through the process.



Separating In Deed

What is a Separation Deed?

A Separation Deed is a legally binding contract entered into voluntarily by both you and your spouse or ex-partner (if unmarried) which contains details of your financial assets, liabilities and income and how they are to be dealt with upon separation.

Separation deeds can be entered into either by married couples or civil partners who have separated, or by unmarried couples who are separating.

Married couples who either do not want to, or are unable to divorce straight away may wish to consider a separation deed, as it allows them to sort out their finances before divorcing at some point in the future.

Once signed, a separation deed is effectively a contract between you and your ex-partner which is capable of being enforced. Upon a divorce the deed would need to be converted into a formal financial remedy order and filed at court for the approval of a judge.

It is important to note however, that a separation deed does not bind the court in. There is always a slight risk, therefore, that if either of you experience a significant change in circumstances after the separation deed is entered into, the court could refuse to make an order in the same terms as the deed following a divorce. In most cases, this is unlikely to happen, but it cannot be ruled out. Therefore, if you do have the grounds to divorce and enter into a financial remedy order, this would be the most final

and secure way of dealing with matters.

There is no such thing as a “common law marriage” so if you are not married, as a general rule, you cannot make a claim on any assets owned by your partner. There are a few exceptions to this, but it is complicated and we would, therefore strongly advise you to talk to us if you find yourself in this situation.

Some examples of items that can be included in a Deed:

- **A statement setting out the purpose of the deed and the fact that you both intend it to be legally binding.**
- **The date of your separation and the fact that you intend to divorce in the future. You can also state such arrangements as who will issue the divorce, and who will pay for it in the future;**
- **What is to happen to the former family home for example: whether it is to be sold or transferred to one of you;**
- **Whether a lump sum is to be paid by one party to the other;**
- **Child maintenance arrangements;**
- **How any pension fund will be dealt with in the future upon divorce (this will be not be enforceable without a divorce).**

There are many other things that can be incorporated into a separation deed and we can discuss all options with you once we have full details of your case. We can help you negotiate a settlement to be incorporated into a separation deed or simply embody an agreement you have already reached with your spouse into a deed. Your separation deed is specifically drafted for you and is therefore unique to your circumstances.

Before proceeding we would recommend that you consider, after advice, whether a divorce or a separation deed is most appropriate for you.

