



GUIDE TO DIVORCE PROCEDURE

From 6th April 2022 the Law regarding divorce changed and is now dealt with under the Divorce, Dissolution and Separation Act 2020.

Obtaining a Divorce is usually quite straightforward. Any difficulties tend to arise from related practical issues such as where you are both going to live, arrangements for any children or money matters.

This guide explains the process in everyday terms so that you understand the basic schedule of a Divorce.

1. What do these words mean?

`Applicant` : The person making the application to Court starting the divorce

`Respondent` : The other party to the marriage who is not the Applicant

`Conditional Divorce Order (CDO)` : A Court Order stating that there are legal grounds for Divorce

`Final Divorce Order (FDO)` : The final Court Order ending the marriage.

2. What are the grounds for Divorce?

- i. You must have been married for over 12 months.





@The Legal Queen

- ii. The only ground for divorce is the `irretrievable breakdown of marriage` that the marriage is over and that there is no going back. This needs to be stated in the Application.

3. What are the steps in a Divorce?

- (i) The Applicant applies for a Divorce on the basis of the marriage having `irretrievably broken down`. The Application is sent to the Court via an online portal. (You will require the original marriage certificate).
- (ii) It is now possible for both parties to a marriage to make a joint application for divorce, if you wish to do this you need to make this decision before applying, as a sole application cannot be changed to a joint application. In the case of a joint application you are referred to as Applicant 1 and Applicant 2. The onus is on Applicant 1 to do the majority of work and pay the Court fee.
- (iii) In the case of a sole application the Respondent is sent a copy of the Divorce papers by the Court by email and post. They have 14 days, from the date the application was served, to complete and return to the Court the acknowledgement of service, either online or on paper.
- (iv) Service of the divorce application can now take place by email but an address of the Respondent is still required because even when serving by email a notice of service by email must be posted to the Respondent.
- (v) Once proof of service of the divorce application is available, the Applicant signs a statement confirming that the contents of the Application are true and asking for the Divorce to continue.



@The Legal Queen



@The Legal Queen

- (vi) A Judge then considers all of the documents. If they are satisfied all legal obligations have been met, they will certify that the papers are in order and give a date for the conditional order for divorce. There is a minimum legal requirement that 20 weeks from the date of issue of the application passes before a conditional order for divorce will be made.
- (vii) Six weeks and one day after the Conditional Order for Divorce is made either party to the Divorce can apply for a final order for divorce.

4. What will it cost to get divorced and who pays?

There is a Court fee to get divorced which is currently £ 593. Your legal costs to have a solicitor will be in addition to this if you choose to have a solicitor. The Applicant for the divorce pays the costs and there is now very limited option to claim costs against the Respondent.

5. Will I have to go to Court?

Only in exceptional circumstances will it be necessary to attend Court.

6. How long will the Divorce take?

There is now a legal minimum period of 26 weeks for a divorce. This is approximately 6 months. This is the minimum amount of time and it may take longer with admin and Court backlogs.

7. Can I stop the Divorce once it has started? (Applicant only)

Yes. We appreciate that people sometimes feel that they have been too hasty in applying for a Divorce. It is important that you are sure you want to go ahead with the Divorce before your marriage is ended by the final Order for Divorce.

8. Can I defend an Application for Divorce? (Respondent only)



@The Legal Queen



@The Legal Queen

You can only defend or try and stop a divorce in very limited circumstances now.

There are only 2 grounds to defend a divorce

- (i) Validity or substance of the marriage (Was it ever a legal marriage or has a divorce already taken place)
- (ii) Jurisdiction of the Court (Does the Court have the power to deal with the application)

9. What is a Judicial Separation?

This is a Court Order recording that you are separated. The grounds and procedures are virtually the same as Divorce although there is only one Decree. However, you are still married after the Decree has been made.

10. When are financial issues dealt with?

Usually financial negotiations will need to be considered at the same time as the Divorce process and is separate to that of the divorce process.

11. Should I make or change my Will?

You should certainly give this some thought. If you have made a Will in favour of your spouse then it will remain valid until you change it (although some changes are assumed once you are actually divorced). If you have not made a Will then your spouse is automatically your next of kin until you are Divorced.

If you would like further information or would like assistance with a divorce please get in touch with us at tracey@moloneyfamilylaw.com.



@The Legal Queen



@The Legal Queen

GUIDE TO FINANCIAL REMEDY PROCEEDURE

Jointly owned property

If you own a property with another person, you will either own that property as `joint tenants` or `tenants in common`. This can be determined by obtaining official copies of the Register from the Land registry. We can do this electronically for you.

The type of ownership affects what you can do with the property if your relationship with a joint owner breaks down, or if one owner dies.

As joint tenants (sometimes called `beneficial joint tenants`) you have equal rights to the whole property. The property automatically goes to the other owner if you die and you can't pass on your ownership of the property in your will.

As tenants in common you can own different shares of the property (held as a percentage). The property doesn't automatically go to the other owner if you are to die and you can pass on your share of the property in your will.

You can change whether you hold the property as joint tenants or tenants in common. If you hold the property as tenants in common and wish to change to joint tenants, you need both parties' consent. If you are joint tenants and wish to change to tenants in common you do not require their consent.

If you would like to understand how you own your property, whether as joint tenants or tenants in common and you would like to consider changing the way you hold the property, please contact us at tracey@moloneyfamilylaw.com.



@The Legal Queen



@The Legal Queen

Procedure for dealing with the finances on separation and divorce.

Parties are now expected to try and resolve disputes in relation to finances outside of Court. It is compulsory for all applicants to engage in a Mediation Information and Assessment Meeting (known as a MIAM meeting). This means that the person who wishes to make the application must first refer the matter to mediation to see whether this would be an appropriate way of settling any disputes.

There are some exceptions to attending a MIAM and these are as follows:-

- Domestic Violence;
- Child protection concerns;
- Related proceedings being issued in the previous four months;
- Urgency;
- Disability leading to an inability to facilitate a MIAM;
- Lack of contact details for the Respondent;
- Imprisonment/bail conditions preventing engagement;
- Non-residency in England and Wales of one of the prospective parties;
- Unavailability of MIAM facilities

If an agreement is reached at mediation or via negotiations, it is essential that the agreement is embodied into a Consent Order. This is an Order, which can be filed at Court as part of the divorce proceedings, without the need to attend Court in the majority of cases. Once approved by the Court it becomes a legally binding document. Without this there is a potential that either party could have a claim against each other at any time in the future, even if you are divorced.

If mediation is not appropriate or does not work and/or an agreement cannot be reached, then it is open to either of the parties to make an application to Court.



@The Legal Queen



@The Legal Queen

This is the procedure for dealing with applications to the Court for financial Orders, in the event that negotiations in correspondence initially are not successful. There are six basic steps:-

1. Application.

The first step is that an application must be made by filing a Form A. This is sent to the Court and a copy served on the other side. Upon receipt of this the Court will fix a first appointment. This will usually be listed 12-14 weeks from receiving the application.

2. Form E.

At least 5 weeks before the First Appointment we have to send to the Court and exchange with the other party a Financial Statement (Form E). This Statement must contain the following;-

- Full name, age, date of birth and occupation;
- State of health;
- Date of marriage and date of separation;
- Full name and dates of birth of any children and with whom they live if appropriate;
- Details of your residence and the occupants;
- A concise statement of your means containing the value of all the assets, liabilities, earning capacity, benefits under any pension schemes that you have or are likely to have together with any other resources which you may receive in the foreseeable future such as inheritance. Where an insurance policy is included the current surrender value and date of maturity is also required. Where benefits under a pension scheme are included we must give all information in our possession concerning any benefits that you have or are likely to have including the most recent



@The Legal Queen



@The Legal Queen

valuation if any are furnished by the Trustees or Managers of the pension scheme;

- A concise statement in respect of any loss of widows or widowers pension that will be suffered by the other side following the divorce;
- A concise statement of the present and future reasonable needs of you and any children of the family;
- Details of the present and proposed future educational arrangements for any children of the family if appropriate;
- Details of any Child Support or maintenance assessment made by the CSA or of any agreement for child maintenance made between you if appropriate;
- A concise statement of the standard of living enjoyed by you both during the marriage;
- Whether any contribution by either of you is considered to be relevant and if so a concise statement of that contribution;
- Whether exceptionally the other side's conduct financial or otherwise during the marriage is considered to be relevant and if so a concise statement of the issues of that conduct;
- Finally any other circumstances which you consider could significantly affect the extent of financial provision to be made for you or any child.

It should attach such of the following documents relevant to you;-

- Last 3 payslips and P60;
- Valuations of all properties and less than 6 months old;
- Most recent mortgage statement(s);
- Last 12 months bank statements for all accounts including joint accounts;
- Any insurance policy surrender valuations;



@The Legal Queen



@The Legal Queen

- Last 2 years accounts for any business and/or partnership and any documentation relating to a valuation of these and all pension valuation documentation.

It is important that this statement annexes any further documents that are necessary to explain or clarify any of above information. It is better to disclose too much rather than too little.

After this statement has been sent to the Court and a copy exchanged with the other side you will receive a copy of their statement.

3. Questionnaire and Request for Documents

Approximately 14 days before the hearing of the First Appointment referred to above, we must also send to the Court.

- A questionnaire setting out any further information that we seek from the other side. The questionnaire should not exceed four pages of A4 in length (using not smaller than a 12-point font with 1.5 spacing). The court is only likely to approve a questionnaire in excess of this length in a case where complexity (including alleged non-disclosure) justifies a longer set of questions;
- A concise statement of the issues between you and a notice in Form G;
- In respect of each property currently used as a family home (with the exception of rented property) the applicant shall file with the court a jointly obtained market appraisal of its value. If obtaining such evidence jointly has proved impossible, the parties should each file a market appraisal for each property and must be prepared to explain the reason to the court;
- Each party should use their best endeavours to file with the court and serve on the other party no more than 3 sets of property particulars showing what their case is likely to be on housing needs for themselves and the other party;



@The Legal Queen



@The Legal Queen

- File with the court jointly obtained material as to their respective borrowing capacities. If obtaining such material jointly has proved impossible, the parties should individually use their best endeavours to obtain and file such material;
- The day before the first appointment the applicant must file with the court a composite case summary using the case summary template ES1 and schedule of assets and income, based on the figures in the parties' Forms E, using the Assets and Income Template ES2.

4. Court Hearing First Appointment.

The First Appointment is held with you both, your respective solicitors or barristers and a District Judge. The District Judge will use this appointment to determine how the case should progress. Their objective is to define the issues and to save costs. In particular the appointment will be used to determine the extent to which each questionnaire shall be answered, and documents produced, give directions as to valuation of evidence or other experts, as to chronologies or schedules etc. and also we will be required to provide an estimate of the solicitors costs to date. It is also at this appointment that the next hearing is listed. Usually this is known as a Financial Dispute Resolution or FDR Appointment. Occasionally the Court will find that an FDR Appointment is not appropriate in which case they will either fix a further directions appointment, fix the case for final hearing or possibly for an Interim Order. Please note that at the first appointment the Court will also make an Order as to the costs of that first appointment having regard to all the circumstances including the extent to which each party has adhered to the rules. It is therefore important that you cooperate fully. It is also our opportunity to ask the Court in the case of urgency to make an Interim Order should we wish to do so.



@The Legal Queen



@The Legal Queen

5. Court Hearing 2-FDR Appointment.

The idea of this appointment is to encourage mediation and compromise. Both parties should be as open as possible with the other. No offer or proposal made orally or in writing, nor any response to an offer can be used in the future proceedings. Because of the nature of this hearing and that disclosures are frequently made, the Judge hearing this appointment will have no further involvement with the application. This would prevent you being prejudiced at a final hearing.

In order to enable the Judge trying the FDR to have full knowledge, they must receive a week before the appointment, copies of any offers and proposals that have been made previously, although these will be returned immediately following the appointment, again so that they will not be kept on the Court file and will not prejudice the final hearing. The importance of this appointment is that the court wishes all parties to use their best endeavours to reach agreement on matters in issue. It is for this reason that the Court usually requires all parties to personally attend the appointment.

6. Hearing 3-Final Hearing.

A hearing will only take place if no agreement has been reached. If the FDR is not successful and the case cannot be mediated upon, then the final hearing will be listed. In a final hearing it is required that we must before the hearing serve on the other side a concise statement, setting out the nature and amount of the Order which we propose to invite the Court to make. It may be necessary for you to give evidence and be cross examined (questioned) at this hearing. If an agreement cannot be reached, the Judge will make a final order with regards to the financial arrangements.

In considering a fair and reasonable division of matrimonial assets, referral is made to a list of criteria set out in s25 Matrimonial Causes Act 1973, as follows:



@The Legal Queen



@The Legal Queen

- The income, earning capacity, property and other financial resources which each spouse has or is likely to have in the foreseeable future including, in the case of earning capacity, any increase in that capacity which it would be, in the opinion of the Court, reasonable to expect a person to take steps to acquire;
- The financial needs, obligations and responsibilities which each spouse has or is likely to have in the foreseeable future;
- The standard of living, enjoyed by the family before the breakdown of the marriage;
- The ages of each spouse and the duration of the marriage;
- Any physical or mental disability of each spouse;
- The contributions which each spouse has made or is likely to make in the foreseeable future to the welfare of the family, including any contribution by looking after the home or caring for the children;
- The conduct of each spouse, if that conduct is such that it would, in the opinion of the Court be inequitable to disregard it;
- The value to each spouse of any benefit, which one spouse, because of the divorce will lose the chance of acquiring (most usually pension provisions).

Whilst the procedure is one of a strict format it is important to remember two points.

1. First you can be penalised on costs if you do not comply with the time limits and it is essential therefore you comply with Court directions or seek an extension.



@The Legal Queen



@The Legal Queen

2. Second there is provision for us to apply to Court during the course of this procedure for further directions, an Interim Order, or an FDR (Dispute Resolution) appointment if necessary.

If you have any questions or would like further information in respect of financial arrangements on divorce, please let us know by contacting us on tracey@moloneyfamilylaw.com.



@The Legal Queen