

Your guide to getting a divorce



The Law Society

Getting advice

The prospect of divorce action can be daunting, but the process need not be difficult with the right professional advice.

Your solicitor is there to guide you through the process, steer you clear of the legal pitfalls and offer sensitive but independent advice.

Choosing a solicitor

If you don't already have a solicitor, visit our website at www.lawsociety.org.uk/findasolicitor and search under 'Family' to get details of solicitors in your area. You may want to instruct a member of the Solicitors Regulation Authority's family law accreditation scheme. The Solicitors Regulation Authority is the independent regulator (set up by the Law Society) which sets the rules that all solicitors must follow. You can find details about this scheme on the website, or you can call 0870 606 2555.

Because a divorce can raise sensitive and personal issues, it is important to choose a solicitor who makes you feel comfortable. Choose someone you find approachable and whose advice you feel you understand. You may find it helpful to speak to a couple of solicitors before you decide who to appoint.

How a solicitor can help

It is your solicitor's responsibility to:

- explain the divorce process to you;
- start the divorce action for you; and
- once it is under way, keep you informed of any developments.

Your solicitor will send you copies of any significant letters they receive relating to your divorce. They will also give you regular updates on the progress of the case, and details of any costs involved.

If you are at risk from domestic abuse at any stage, your solicitor will make it a priority to discuss all possible ways of keeping you and your children safe.

What your solicitor will need to know

To get a thorough understanding of your circumstances, your solicitor will ask you for a variety of details and documents. These could include:

- the reasons you want a divorce;
- if you are living apart from your husband or wife and when you separated;
- the names and ages of any children who are part of the family;
- the children's current and future living arrangements;
- the current contact arrangements between parents and children;
- a list of your assets, savings, income and pension arrangements, and those of your husband or wife;
- details of any ongoing problems such as substance abuse, debts and so on;
- details of any domestic abuse;

- your marriage certificate; and
- any other relevant documents, names and dates.

These details and documents will help your solicitor to decide what grounds there might be for a divorce and what other options might be available to you. They will also help your solicitor to estimate what the timescales, costs and results of your case might be.

Grounds for divorce

You will only be granted a divorce if you can demonstrate that your marriage has suffered an 'irretrievable breakdown'. To do this you must show that your marriage is beyond repair because:

- your husband or wife has committed adultery;
- your husband or wife's behaviour is such that you cannot reasonably be expected to live with them;
- your husband or wife left you at least two years ago without good reason and refuses to return;
- you have been separated from your husband or wife for two years and they agree to the divorce; or
- you have been separated from your husband or wife for five years or more.

Your solicitor will be able to give you more details of each of these sets of circumstances.

If a divorce decree is against your religion, your solicitor can give you advice about other forms of separation and can use civil action to help you get a religious divorce.

The divorce process

The legal formality of getting a divorce is a relatively straightforward process. What is generally much less straightforward is sorting out the practical issues associated with a divorce, such as where each person will live, who gets what, and arrangements for any children. Before agreeing matters with your husband or wife, it is wise to take advice from a solicitor about your rights and the options available to you.

The legal terms used in divorce

In court and in legal documents, the person applying for the divorce is known as 'the petitioner', and the person they are divorcing is 'the respondent'.

Initial letter to the respondent

If you are applying for the divorce, your solicitor will usually start the process by writing a letter to your husband or wife to tell them that you are planning to start divorce action. This letter will also recommend that your husband or wife gets independent legal advice if they have not done so already.

Divorce petition

Your solicitor will then send the divorce petition to the court. The petition sets out whether you will be asking your husband

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or wife to pay for the costs of the divorce or to provide some other sort of financial support for you or your children. The court will send a copy of the petition to your husband or wife for their solicitor to reply to within seven days.

Once your husband or wife or their solicitor has replied to the petition, you will need to confirm your intention to go ahead with the divorce application by making a sworn statement or 'affidavit'. Your application is then lodged with the court. If your husband or wife does not reply or cannot be found, your solicitor will tell you the methods for overcoming this.

Statement of arrangements for children

If you have children under the age of 16 (or between 16 and 18 in full-time education), you will need to fill in a form called a 'statement of arrangements for children'. This asks for details about your children such as:

- who they will live with;
- where they are educated; and
- what your plans for them are, including any arrangements for visits by, or contact with, the other parent.

When the court comes to consider the divorce papers, they will take this information into account to make sure that the children are properly provided for.

Decree nisi

Once the court is satisfied that you should have a divorce, it sets a date and time for the judge to pronounce the 'decree nisi'. You do not need to go to court for this. It is simply a statement from the court that the divorce can go ahead and the divorce papers are approved. You are not actually divorced at this stage.

If at this point you and your husband or wife have not agreed who should pay the legal costs of the divorce, the judge pronouncing the decree nisi will make the decision for you.

Decree absolute

Six weeks after the decree nisi, the person applying for the divorce can have the divorce made 'absolute'. This legally dissolves the marriage. However, you are usually better to wait until financial matters ('ancillary relief') have been settled before finalising your divorce in this way.

Disagreements

Disagreements generally relate to:

- money;
- property; or
- contact with children.

Solicitors have a professional duty to settle these out of court if at all possible. It is usually in the interests of both you and your husband or wife to co-operate with this aim. Your solicitor will explain to you the alternatives to court action, such as mediation.

Providing information

It is particularly important for you to provide your solicitor with full and accurate information about your financial circumstances. A common problem and source of disagreements is where the husband or wife fails to give details of all their assets. This slows everything down and, if the matter cannot be settled out of court, that person may have to pay court costs.

Expert witnesses

If you and your husband or wife cannot agree over the value of property or assets, your solicitor may suggest using an expert witness to provide an independent valuation. In financial matters, this is often a single witness approved by both partners and the court.

Disagreements settled by the court

If you and your husband or wife cannot solve a disagreement out of court, you can apply for the court to settle the matter. The court will do all it can to encourage you to negotiate an agreement between you, but failing this the judge will make a decision. Usually the judge will issue a 'court order' to make their decision official.

Recording your agreement

However you go about reaching an agreement with your husband or wife on the terms of a divorce, your solicitor can give you advice on the best way to record what you have agreed. If divorce action is already under way, they will usually advise you to opt for a court order which will set out the terms of the agreement clearly and in a way that is legally enforceable. Or, if you have not yet started action for divorce, you should consider making a 'separation agreement'.

Children

In all matters relating to children, the children's welfare comes before anything else. Your solicitor will:

- emphasise how co-operating with your husband or wife will benefit your children;
- warn against the dangers of encouraging children to take sides;
- encourage you to consider what you plan to tell your children about the separation;
- make you aware of alternatives to court proceedings, such as mediation;
- discourage court action as a way of settling disagreements, except as a 'last resort'; and
- treat all matters relating to children as confidential.

There to help

Whatever your circumstances, a family law solicitor has the knowledge and experience to represent your interests and those of your children.

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Costs

Charges can vary between solicitors and will depend on the difficulty of the case. Before you decide who to appoint, check with a few local solicitors to find out how much they charge.

Price is not the only issue, however, particularly for a sensitive divorce case. It is more important to find a solicitor who is approachable and sympathetic, and whose advice you understand.

Financial help

If you have a low income or receive State benefits, you may be able to get help towards your legal costs. Your solicitor will know if you qualify and will explain your options to you.

More information

This is one of a series of leaflets covering the most common types of legal services provided by solicitors. Other leaflets in the series are listed below. You can get them either from your solicitor, or by phoning the Law Society on 0870 3333 084.

- Your guide to making a will
- Your guide to buying a home
- Your guide to problems at work
- Your guide to setting up in business
- Your guide to making a personal injury claim
- Your guide to financial matters for the elderly
- Your guide to setting up home with your partner
- Your guide to renting out your property
- Your guide to renting a home
- Your guide to using a solicitor
- Your guide to probate
- Your guide to claiming asylum

You can get this leaflet in large print, in Braille, on audio tape and on CD. If you need one of these versions, please contact us by e-mail at accessibility@lawsociety.org.uk or phone 0870 606 2555.

You can also get this leaflet in different languages. You can get these by visiting our website, www.lawsociety.org.uk.

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