

# HART BROWN GUIDE

## The Divorce Procedure

List of Fact Sheets available from *Hart Brown* :

1. Children Act Orders
2. The Divorce Procedure
3. Financial Provision Upon Divorce
4. Financial Provision Following Separation
5. Guardianship

**Who can file a divorce petition?**

Anyone who has been married for over a year, provided one or other of the couple is either domiciled here or has been resident in England and Wales during the whole of the preceding year. It does not matter where the couple were married.

**What are the grounds for divorce?**

The only ground for divorce is that the marriage has irretrievably broken down. It is necessary to establish one of the following facts:

- Your spouse has committed adultery and you find it intolerable to continue to live together.
- Your spouse has behaved in such a way that it would be unreasonable to expect you to continue to live together.
- Your spouse has deserted you for a continuous period of 2 years or more.
- You and your spouse have lived separately for 2 years or more and your spouse agrees to the divorce.
- You and your spouse have been living separately for 5 years or more, whether or not your spouse consents to the divorce.

**The first steps**

These will depend on your particular circumstances. It is often sensible to try to obtain your spouse's consent to a petition for divorce and to try and reach an agreement over its contents. For example, if your spouse accepts that the petition should be based on unreasonable behaviour, only a brief outline of the particular behaviour may need to be given. Any international issues must be identified. For example, whether either of the spouses has nationality in any member state of the European Union. It is also crucial to identify the existence of foreign proceedings that relate to the marriage or are capable of affecting its validity.

**The petition**

Every petition contains basic information giving names, addresses, ages of children, a statement that the marriage has irretrievably broken down and the fact (from the list above) upon which you rely.

**Arrangements for any children**

The law encourages

ouples to try to agree arrangements relating to children. A form is sent to the court with the divorce petition, which will outline these arrangements. The person filing the petition ("the petitioner") usually completes this form (known as a "statement of arrangements"). Preferably, it should be presented to the other spouse before it is filed. If agreement is not reached, this does not prevent the divorce from proceeding.

**Financial issues**

Financial discussions do not need to be completed by the time the divorce is final. Sometimes these will still be in the early stages if the finances are complicated. However, it should at least be possible to resolve immediate problems and make temporary maintenance arrangements.

**Timetables**

1. After one year of marriage – either spouse may start a divorce. A petition and the statement of arrangements about the children are completed and sent to the court together with the marriage certificate. A fee, currently £180, is payable, unless the petitioner is exempt from paying a fee due to low income.
2. Within a few days the court will forward a copy of the petition and statement of arrangements to the other spouse ("the respondent"). A copy of the petition is also sent to anyone else named in an adultery petition (the "co-respondent"). If the respondent, or co-respondent, has instructed solicitors, the petition may be sent to them.
3. From the date that these documents are received, the respondent has strict time limits to observe. Within 8 days he or she must return the "acknowledgement of service", which accompanied the petition, to the court. This form asks the respondent whether it is accepted that this country (England and Wales) is the right one (has jurisdiction) to deal with the petition, whether it is intended to defend the petition, whether any claim for costs is disputed and whether orders affecting the children are sought.
4. If there is a dispute about jurisdiction and/or there are existing foreign proceedings, then the case will be referred to the District Judge. The District Judge is likely to ask for more information about the dispute. There may even be a short hearing for the parties to attend to explain. In such cases, the petition may have to be stayed and the procedure

5. Within 29 days of receiving the petition and statement of arrangements, whether or not an acknowledgement of service has been returned the respondent must file a defence (called an "answer") if the intention is to defend the petition. If the petition becomes defended the procedure set out below does not apply. Defended divorce proceedings, resulting in a fully contested hearing are very rare. In such cases, a delay in finalising the divorce is inevitable.
6. Within a few days of receiving the acknowledgement of service from the respondent (and co-respondent if applicable) the court forwards a copy to the petitioner's solicitors.
7. If an acknowledgement of service is not returned to the court, proof that the respondent (and co-respondent) has received the petition will have to be obtained before the petitioner can take the next step. This is likely to mean that the petition must be delivered personally to the respondent. Exceptionally, a court order may be obtained stating that proof that the respondent received the petition is not needed. This is called "dispensing with service".
8. If the respondent is not defending the petition, the petitioner can apply for a decree of divorce (decree nisi) to be pronounced. The petitioner's solicitor prepares an affidavit for the petitioner to swear confirming that the contents of the petition are true. The affidavit will also detail any circumstances, including those relating to the children, which have changed since the petition was filed. The petitioner will swear the affidavit before a solicitor or court official. This will then be sent to the court with a request for a date for the decree nisi to be pronounced.
9. On receipt of the petitioner's affidavit and application, a district judge will decide whether the petitioner is entitled to a decree. If he is not satisfied, he may ask the petitioner to file further evidence in support of the petition. Once he is satisfied, the court will fix a date for the decree nisi to be pronounced and notify both the petitioner and the respondent through their solicitors. This date is likely to be a few weeks after the application is lodged. Neither party need attend court although sometimes they may wish to do so if there is an argument about costs.

## ***The Divorce Procedure***

that is explained below will become irrelevant.

10. If agreement has been reached about arrangements for the children the district judge is unlikely to intervene. If there is no agreement the district judge may ask the parents to attend an informal appointment to explore possible solutions. The district judge may also ask a children and family reporter to become involved. If a solution cannot be reached, this may delay the granting of the final decree of divorce (decree absolute).
11. Once the arrangements for the children have been settled and six weeks and one day have passed since the date of the decree nisi, the petitioner may apply for decree absolute by sending the appropriate form to the court and a fee.
12. If the petitioner does not apply for decree absolute then 3 months after the date when he or she could first have applied for decree absolute, the respondent may do so.
13. After the decree nisi has been made absolute you will be free to remarry. Note that upon remarriage you may lose important rights to claim financial provision within divorce proceedings. You should therefore always check with your solicitor in good time before remarrying.

### **Mediation**

Sometimes it is not possible to reach agreement either about the children or about finances. This can happen either during the divorce procedure or afterwards. Such disputes can be resolved by Court proceedings. However, a cheaper and more conciliatory alternative is offered by the increasingly popular process of mediation. In mediation, trained mediators help separating or divorcing couples to resolve disputes over finances or children, usually over the course of several meetings.

For further information about divorce or mediation contact [Geraldine Morris](#) at Hart Brown on 01483 887766.