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Your questions answered

THE DIVORCE PROCESS

This client guide explains the legal process involved when getting divorced in England and Wales.

The process of divorce legally ends a marriage. Since April 2022, England and Wales have moved to a no-fault based divorce system which means that you do not have to provide a reason for the breakdown of your marriage.

Below we explain the administrative process of getting a divorce; however, it is important to note that getting a divorce does not end your financial connection to each other or resolve any child arrangement issues.

You will need to make arrangements for assets, property, money, children etc., separately, and we recommend that you take legal advice as soon as possible to ensure this is handled correctly.

Step 1 - Making or responding to an application

You cannot begin divorce proceedings until you have been married for at least a year.

To start, you need to submit an application to the court (**Form D8**) with a declaration that your marriage has broken down irretrievably.

This is usually made online via a court portal (although you can make a paper application) and requires a payment to the court.

You can apply for a divorce by yourself (sole applicant) or make a joint application with your ex-spouse (joint applicants).

Alternatively, if you receive a divorce application from your spouse, you are called the respondent in the legal process.

Applying as a sole applicant

Once the court has received your application, they will send a copy to your spouse, generally by email. This will be followed up by a letter from the court.

Your spouse will then have 14 days to respond to the application and will need to complete and return the Acknowledgment of Service.

If your spouse does not return the Acknowledgment of Service, and you believe they are deliberately delaying doing so, we can instruct a process server to serve the application to your spouse personally. This is when someone physically delivers the divorce papers to your spouse at their home, other known address or place of work.

The process server then provides a statement of service that can be used instead of the signed Acknowledgment of Service.

Applying as joint applicants

If the application is made jointly, once you have received the documents from the court, you will both need to send a form to the court indicating that you have received notice of the proceedings. The person to initiate the joint application is called applicant 1 and the other party will be applicant 2. This is important to note because applicant 1 is the person who pays the court fee and completes most of the application form.

When applicant 1 lodges the joint application with the court, it will be sent to applicant 2 to check details and add some further information. This is done on the online court portal. Once applicant 2 has completed their part, it is sent back to applicant 1 to approve before it is finally issued.

Both parties as applicants will need to file an Acknowledgment of Service when it has been issued by the court.

You should then both apply together for the conditional order and the final order. If you feel that the other party is unreasonably delaying progressing the divorce, you can apply for the conditional order and/or the final order on your own. This "switches" the joint application to a sole application.

Responding to a divorce application

If your spouse has made the application for divorce as a sole applicant, the court will send you (the respondent) a copy of the application by email with a follow-up letter from the court with details of how to access the application.

You will find the completed divorce application, the Notice of Proceedings, and the Acknowledgment of Service within this email.

In most instances you should receive the divorce application within 28 days of it being issued by the court. The applicant however can ask for permission to serve the application later than this.

You will need to fill in and return the Acknowledgment of Service to the court, usually within 14 days of receipt of the application. A solicitor can complete this document for you and file it at court.

In some instances you may feel there's a need to ask the court to delay the divorce process until it has dealt with the financial issues. We can give you further advice if this is applicable in your situation.

In very rare circumstances, it is possible to dispute an application for divorce, for example, if there are queries about the validity of the marriage or a dispute over the jurisdiction.

If this is the case, you will need to file an answer to the application explaining the grounds upon which you are disputing the proceedings. It is highly recommended you seek legal advice before responding to the divorce application.

Step 2 - Cooling off period

After the court has issued the application, there is a "cooling off" period of 20 weeks before you (or you and your spouse jointly) can apply for a conditional order which is the first stage of the divorce.

A conditional order means that the court accepts you are entitled to a divorce, but it does not mean your divorce is final. In the eyes of the law, you are still married.

During this 20-week wait, you can work to resolve any financial arrangements, for example, what happens to any property, maintenance and division of other assets, including pensions, capital, business interests etc.

However, a court cannot approve a financial settlement (which is recorded in a document called a consent order), or make an order in contested proceedings, until the conditional order is pronounced.

Once you have filed the acknowledgement with the court and on the basis the divorce is not disputed, it is unlikely that you will need to do anything further and we will send the conditional order and final order to you when they are issued by the court.

If the applicant unduly delays in applying for the final order then 3 months after they could have first applied, it may be possible for you to ask the court to make the final order. We will advise about this if applicable.

Step 3- Conditional order

After the 20-week cooling-off period, your application for a conditional order will be reviewed by the court to check all the paperwork is in order. If it is, the court will then provide a date for the conditional order to be made.

You do not need to attend court for the making of this conditional order. The court will issue the order electronically.

Step 4 - Final order

Six weeks after the court makes the conditional order, you can apply to the court for a final order. This can be done as a sole applicant or joint applicants with your spouse.

This order legally ends your marriage.

What about any financial issues or child arrangements?

The process of divorce does not resolve any financial issues or child arrangements. You need to negotiate these separately, and we recommend you take legal advice as early as possible.

If you can reach an agreement on your finances, you should make it legally binding by recording it in a consent order document that the court must approve.

Alternatively, if you cannot reach an agreement, you may need to make an application to the court for them to decide. There are other options that may be better than court including mediation, collaborative family law or arbitration and we can discuss all these options with you to decide what is most appropriate for you.

If there are financial issues to resolve, it is important to wait until the court has approved the consent order before applying for the final order.

This is because if one party was to die unexpectedly after a divorce had been finalised, but before financial issues had been resolved, then any widow's or widower's entitlements could be lost.

We have teams of specialist finance and children lawyers who can assist you in dealing with all the other issues that may need to be resolved as you progress through your divorce.

Need more information?

Call our Client Care Team on **0330 838 7456** to speak with one of our specialist family lawyers or visit www.stowefamilylaw.co.uk



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