

# A Guide to

# Obtaining a Divorce

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Always here for you.

■ Understand how divorce will affect you.

■ Understand the relevant legal terms and how they apply to you.

■ Understand what is happening at each stage of the process.

## Section

### 1

*This Guide has been designed to assist you with some of the general issues and to answer questions that you may have. This Guide is only intended to be a general overview of the law in relation to divorce and legal advice should always be obtained from Leonard Gray in application to a particular case.*

## Applying for a Divorce

To obtain a divorce in England and Wales you will need to consider the following:

### 1. Who can apply

Anyone who has been married for over a year can apply to the Court for a divorce. One of the parties must have their permanent home in England and Wales and have been residing in England and Wales for the preceding 6 months. In other cases, there may be jurisdictional issues which should be discussed with one of our family law experts.

An applicant can be made by one spouse (a sole application) or by the couple jointly (a joint application). If the application is a sole application, the person who starts the divorce proceedings is known as the Applicant and the other spouse is called the Respondent. If the parties make a joint application, both spouses are the Applicants and there is no Respondent.

An application that begins as a joint application can be changed to a sole application if one of the spouses decides they no longer wish to pursue divorce proceedings or refuses to progress the divorce. An application that starts as a sole application cannot be change to a joint application.

### 2. Basis of Divorce

There is only one ground for divorce, which is that the marriage has irretrievably broken down.

### **3. The application**

The cost of the application is £593. The application is made online and once the proceedings have been issued, a copy of the divorce application will be sent to the respondent for them to create an account, through which they can then respond to the divorce.

Every application follows the same format and the applicant will be asked a series of questions regarding the parties' names, addresses, the place and date of marriage and whether you intend to apply for a financial order or not.

Once the application has been issued and acknowledged by the respondent, the applicant must wait 20 weeks until they can apply for what is known as the Conditional Order. The Conditional Order is an Order made by the Court to state that the parties are entitled to a divorce. You are still married until such time as your Final Order is granted, which can be applied for 6 weeks and one day after the Conditional Order is pronounced.

In some circumstances, we would advise not to apply for the Final Divorce Order until the financial matters have been resolved. To determine whether this applies to you, please speak to one of our family lawyers for more information.

### **4. The children**

The law encourages couples to agree arrangements for the children between themselves. The Court has a No Order principle meaning that they will not become involved, or make an Order, unless it would be in the best interests of the children to do so. If arrangements for the children cannot be agreed, you will need to make an application under the Children Act 1989; however, it is important that you seek advice from our family lawyers first. Please refer to our guide: [A Guide to Children - Children and the Courts](#) for further details. If agreement is not reached in relation to children matters, this does not prevent the divorce from proceeding and/or being concluded.

## Section 2

# What happens next?

*In this Section of the Guide we look at the complete divorce process, from the issue of proceedings to Final Divorce Order.*

### 1. Issue of proceedings

You can apply for a divorce online via the government website. Alternatively, if you'd prefer to make a paper application, you will need to complete Divorce Application Form D8 and send it to the Divorce Service by post. The application will then be issued and allocated a case number. The Court will send Notice to the respondent that the application has been issued.

To apply for a divorce, you will need both of your full names and address, your original marriage certificate or a certified copy and both parties' addresses and email addresses, if making the application online.

### 2. Service on the Respondent

The Court sends copies of the application to the Respondent or their solicitors via email or post depending on the method of your application.

Within 14 days from the date of service (longer if the documents have been sent to an address abroad) the Respondent should complete the acknowledgement of service form to the Court. This will confirm whether or not they:

- agree with the divorce
- intend to dispute the divorce



If the Respondent intends to dispute the application, then a defence (called an 'Answer') must be filed with the Court to state why they disagree with the divorce. They cannot dispute the divorce simply because they do not want a divorce or want to delay the process. If they do dispute the divorce, you may be asked to attend a short Hearing before a Judge to enable matter to be determined.

If the respondent does not submit an answer form or if the divorce is acknowledged, you will need to wait 20 weeks from the date of issue before applying for the Conditional Order.

If the Respondent fails to return the acknowledgement to the Court, it is possible to ask the court to "deem service". This is where you ask the Court to accept that the respondent has received the papers, even though they have not acknowledged them.

### **3. Conditional Order**

A divorce order is made in two stages. 20 weeks after the divorce application is issued, you can apply for the first stage of the divorce order, known as the Conditional Order. In the application for the Conditional Order, you must confirm that you wish to proceed with the divorce and that the contents of the application remain unchanged or, if not, what has changed in the application.

For joint applications, if one of you no longer wishes to apply for divorce or simply refuses to progress the divorce proceedings, the other Applicant can make the application for a Conditional Order on a sole basis. From that point on, the application becomes a sole application, and that Applicant can then make the application for a Final Order of divorce. The spouse who is no longer participating in the proceedings is called the Respondent from this stage of the proceedings onwards.

### **4. Final Order**

The Applicant may apply for the Final Order of divorce once six weeks and one day have elapsed from the day the Conditional Order was made. However, in most cases it

is not advisable to apply for the Final Order until all financial matters have been resolved whether by way of court proceedings or by an agreement being made into a court order.

Similarly, with applying for the Conditional Order, if one of you decides at this stage that they no longer wish to apply for a final order for divorce or simply refuses to progress the divorce proceedings, the other Applicant can apply for a Final Order of divorce. That Applicant must first formally inform the other applicant of their intention to make the application. They can then only apply for the Final Order of divorce 14 days after they have informed their spouse of their intention to apply.

In a sole application, if the applicant does not apply for the Final Order six weeks and one day after the Conditional Order, the respondent would need to wait a further three months before they could apply to finalise the divorce. It may be necessary to request an Undertaking (formal promise) from the other party not to apply for a Final Divorce Order until the finances are resolved, to protect your financial interests until an agreement has been reached. Once granted, the final Order is sent to both parties.

Once the Final Order is made, the parties are divorced and free to remarry. If new wills have not already been made by the parties following separation, then it is important that they make new wills following the Final Order. For advice on preparing a new will, please refer to our Private Client team.

## **5. Financial issues**

Financial discussions do not have to be completed by the time the divorce is final. Indeed, if finances are complicated they may still only be in the early stages.

It is very important that a court order is made reflecting the final financial agreement. Please refer to our guide: [Divorce – Obtaining Financial Orders](#) for further details.

*The next Section of this Guide will look at how to make an appointment.*

## Section 3

# Making an Appointment

If you would like to discuss the issues raised in this Guide further then please contact **Sarah Orrell** or **Devon McNamara** who will be happy to do so.

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We are based in Chelmsford town centre, a two minute walk from Chelmsford Rail Station with car parking and disabled access at the rear of our office for the use of clients.

Open Monday to Friday, 9am to 5pm.

Alternative times by arrangement.

Other available Guides from Leonard Gray:

- **A Guide to Divorce – Obtaining Financial Orders**
- **A Guide to Children – Advice for Parents**
- **A Guide to Children - Children and the Courts**
- **A Guide to Cohabitation**
- **A Guide to Wills following a Divorce or Separation**

