



T:01252 726 741

DIVORCE • MEDIATION • COLLABORATIVE LAW • FAMILY LAW



SEPARATION

When a marriage, or civil partnership, runs into difficulties, often neither spouse wants to immediately issue a divorce, or dissolution petition, and sometimes they don't wish to divorce at all; but, upon their separation from each other, do want to put some formalities in place to help the family deal with such things as parenting arrangements and financial arrangements.

It is possible to obtain a formal Order from the Court – through a Decree of Judicial Separation. This involves the issue of a Petition (citing one of the five facts as set out on the page dealing with divorce and dissolution of a civil partnership), and a very similar procedure to a Divorce, but rather than a Decree Absolute of Divorce, or Dissolution Decree for Civil Partnerships, the Court issues a Decree of Judicial Separation. In law, therefore, the husband and wife remain married, or the couple remain in a Civil Partnership. In the main, the couples who take this route have a moral or religious objection to divorce.

Within the Judicial Separation procedure, the Court can deal with most financial issues as it can under divorce and dissolution of partnership. It cannot deal with pensions however. This is because, under Judicial Separation, the parties do not divorce, or have their partnership dissolved, so can usually receive pension benefits upon the death of the other in the same way as married couples or civil partners who remain living together in the family home.

The majority of people who separate do consider their marriage, or civil partnership, to be at an end, but either do not wish to pursue a divorce, or dissolution, petition straight away, or cannot issue a Petition until at least 2 years separation has occurred (i.e. they do not have grounds to pursue adultery or behaviour petitions).

A Separation Agreement can be prepared which sets out the arrangements agreed between the couple concerning their children and/or finances. It should be noted that this is not entirely risk free, as one spouse, or civil partner, could ask the Court to make a different financial order at the time of the divorce or dissolution, if they have become unhappy with the original agreement. The Court can override the terms of the Separation Agreement if it is felt reasonable to do so.

To reduce the risk of the Agreement being overturned by the Court, it will usually be taken into account if the following has occurred:

- That each of you has provided full financial disclosure to the other
- That each of you has had the opportunity of taking independent legal advice
- There have been negotiations between you, which have been free of undue pressure, and where each of you has been able to put forward proposals and options for settlement
- That your respective solicitors have drafted the Separation Agreement and provided advice on its terms, prior to your signing it.

At JLS Solicitors we can help you with your discussions and negotiations, either in the “traditional” solicitor’s role; or through the collaborative law process, or assist you as a couple through the mediation.



T:01252 726 741

DIVORCE • MEDIATION • COLLABORATIVE LAW • FAMILY LAW



DIVORCE & DISSOLUTION OF A CIVIL PARTNERSHIP

Divorce is often considered to be too easy. Our experience is that it is the exact opposite. By the time most people see a Family Solicitor they have often been through a lot of agonising, and we regularly hear clients telling us that they think the marriage has been in difficulties for some time. As such, it is by no means the “easy option”.

There is one ground for divorce, and dissolution in this country – that the marriage, or civil partnership, has irretrievably broken down. This is evidenced to the Court by proving one of five “facts”, as they are known. These are as follows:

Adultery – this does mean a sexual relationship between one spouse and another person of the opposite sex, not simply suspicion of one. It is usually proven by the spouse who has had the affair providing a confession of adultery, to enable the Petition to go ahead.

Unreasonable behaviour – this encompasses a variety of behaviour, but it does need to be sufficiently serious to warrant a decree of divorce being granted by the Court. Growing apart from each other and leading separate lives more and more would not usually be sufficient on its own, for example. In practice, a Petition citing unreasonable behaviour would usually contain 4 or 5 allegations of behaviour.

Desertion – this is where one spouse has effectively abandoned the other, and that this state of affairs has gone on for at least 2 years.

2 years’ separation with consent – invariably this will mean a physical separation i.e. separate homes, for at least the last 2 years; and whilst one spouse issues the Petition, the other consents to a decree of divorce being granted. The law does provide for a short period of living together as husband and wife, i.e. an attempted reconciliation, but for no more than six months and that time has to be added on to the 2 years. For example, if Husband and Wife separated on 1st May 2006, and during 2007 they had an attempted reconciliation for 3 months before separating again, then a Petition could be issued after 1st August 2008.

5 years’ separation – again, this invariably requires a physical separation, as above, but for a period of in excess of 5 years. No consent is required from the non-petitioning spouse; although, unique to this type of Petition, the non-petitioning spouse can request the Court to hold off granting the final decree of divorce – Decree Absolute – until financial matters have been resolved between them.

There is a Court-recognised protocol to follow when a Family Solicitor receives instructions to pursue a Divorce or Dissolution Petition for a client – this is to try and encourage the couple to deal with the whole procedure that will follow the issue of a Petition (i.e. any issues involving the children, and financial issues) in a conciliatory manner. As such, rather than simply issuing a Petition and it landing on the doormat without warning to the non-petitioning spouse; the protocol states that unless there is a very good reason for not doing so, contact should be made with the other spouse by letter and inviting him or her to take independent legal advice for themselves.

A draft of the Petition should be prepared, and sent to them for consideration before it is issued at Court; and if necessary, some negotiation about the wording of it (particularly in relation to a behaviour Petition) can take place. These steps should also prevent a Petition being defended and therefore additional emotional and financial cost being placed upon the family.

At JLS Solicitors, we will always seek to follow the Court-recognised protocol in respect of the divorce procedure; and to encourage discussions and negotiations between the husband and wife, and their solicitors to resolve the issues between them, and to have any Court Orders needed made by consent.