

Your guide to getting a divorce

separation support

Getting advice

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

RLE Law are there to guide you through the process, steer you clear of the legal pitfalls and offer sensitive but independent advice.

What we will need to know

To get a thorough understanding of your circumstances, we 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 the 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 us to decide what grounds there might be for a divorce and what other options might be available for you. They will also help us 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;
- you have been separated from your husband or wife for two years and they agree to divorce; or
- you have been separated from your husband or wife for five years or more.

We will be able to give you more details of each of these sets of circumstances. If a divorce decree is against your religion, we can give you advice about other forms of separation.

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 about your rights and the options available to you.

The legal terms 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, we 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

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

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, we will tell you the methods of overcoming this.

Statement of arrangements for children

If you have children under the age of 16 (or under 18 and 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, it is 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. We will explain to you the alternatives to court action, such as mediation.

If you have disagreements about issues related to the divorce, such as finances and access to children, you should attend a meeting to find out if you are suitable to go through mediation before you apply for a court order. Mediation is where you and your spouse meet with someone trained to help people sort out disagreements between themselves. We will be able to advise you on this, and help you to arrange a meeting.

Providing information

It is particularly important for you to provide us with full and accurate information about your financial circumstances. A common problem and source of disagreement 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 value of property or assets, we 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 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, we can give you advice on the best way to record what you have agreed. If divorce action is already under way, we 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. We will:

- emphasise how co-operating with your husband or wife will benefit your children;
- warn against the dangers of forcing children to take sides;
- encourage you to consider what you plan to tell your children about your 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.

Financial help

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