



# Your Guide to Getting a Divorce

How can we help you?



**HK** Humphries Kirk  
solicitors and arbitrators

For life in all its colours

# Your guide to getting a divorce

The prospect of divorce action can be daunting, but the process need not be difficult with the right professional advice. We are here to guide you through the process, steer you clear of the legal pitfalls and offer sensitive but independent advice.

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## How we can help

We will:

- Explain the divorce process to you;
- Start the divorce action for you; and
- Once it is under way, keep you informed of any developments.

We will send you copies of any significant letters we receive relating to your divorce. We will also give you regular updates on the progress of the case, and details of any costs involved.

If you are at risk from domestic abuse at any stage, we will make it a priority to discuss all possible ways of keeping you and any children safe.

## 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 spouse 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 parents and children;
- A list of your assets, savings, income and pension arrangements, and those of your spouse;
- 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 decide what grounds there might be for a divorce and what other options might be available to you. They will also help us 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;
- Their behaviour is such that you cannot reasonably be expected to live with them;
- They left you at least two years ago without good reason or your agreement;
- You have been separated from your spouse for two years and they agree to the divorce; or
- You have been separated for five years or more.

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 partner, it is wise to take advice about your rights and the options available to you.

## The legal terms used 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 spouse to tell them that you are planning to start divorce action. This letter will also recommend that they seek 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 partner to pay for the costs of the divorce or to provide some other sort of financial support for you or any children. The court will send a copy of the petition to them, together with a Form of Acknowledgement that they or their solicitor will need to complete.

Once your spouse or their solicitor has replied to the petition, you will need to confirm your intention to go ahead with the divorce application by completing a sworn statement of truth. Your application is then lodged with the court. If they do not co-operate or cannot be found, we will tell you the methods for overcoming this.



### **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 spouse 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 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 spouse 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 or arrangements for children, you should attend a meeting to find out if your matter is suitable to go through mediation before you apply for a court order. Mediation is where you and your spouse work with someone who is trained to help people sort out disagreements between themselves. We will be able to advise you on this, help you to arrange the meeting, and are available throughout the process.

### **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 one party fails to give details of all their assets. This slows everything down and, if the matter cannot be settled out of court, will increase costs.

### **Expert witnesses**

If you cannot agree over the value of property or assets, we may suggest using an expert to provide an independent valuation. In financial matters, this is often a single expert approved by both parties.

### **Disagreements settled by the court**

You can apply for the court to settle the matter, if disagreements cannot be resolved out of court. The court will do all it can to place you in a position where you have the information you need to bring about a conclusion to your matter and will encourage both parties to negotiate an agreement between you. Failing this the judge will make a decision. The judge will issue a 'court order' to make their or your decision official.

### **Recording your agreement**

However you go about reaching an agreement with your partner 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 encouraging children to take sides;
- Encourage you to consider what you plan to tell your children about the 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.

# Your guide to getting a divorce

## Private Clients

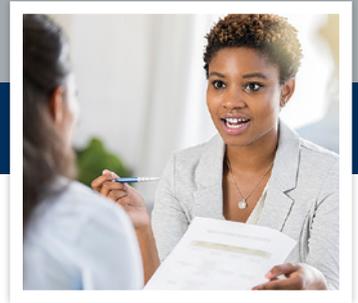
### A personal approach to legal advice

Trust is the most important aspect when it comes to legal matters.

We believe it is essential that we take time not only to review your legal issue, but also get to know you. From business to personal affairs, a complete understanding of your circumstances and objectives is the starting point. Once we can see the bigger picture, we can focus on the detail.

### Talk to us about:

- Arbitration
- Buying and selling your home
- Care Is Our Concern
- Children
- Cohabitation
- Consumer law
- Contested Will and estate claims
- Debt recovery
- Divorce and financial advice
- Domestic violence
- Inheritance tax advice
- Landlord and tenant
- Lasting Powers of Attorney
- Litigation
- Living Wills
- Personal injury
- Prenuptial agreement
- Tax and succession
- Trusts
- Wills and probate



For more detailed advice on getting a divorce and how it can affect you and your personal circumstances, please contact your nearest Humphries Kirk office.

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