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DIVORCE

To assist those of our clients who may be contemplating divorce we set out below some general information about the process.

The statute governing divorce at present is the Matrimonial Causes Act 1973 as amended.

A party to a marriage may ask for a divorce if they have been married for more than one year. Either party may then present a divorce petition to the Court stating that the marriage has irretrievably broken down. The party asking for the divorce (the Petitioner) must prove irretrievable breakdown by citing one or more of five factors. These are set out below.

Adultery

- (a) That the other spouse (the Respondent) has committed adultery and the Petitioner finds it intolerable to live with the Respondent.

Unreasonable behaviour

- (b) That the Respondent has behaved unreasonably and that the Petitioner cannot reasonably be expected to live with the Respondent.

Desertion

- (c) The Respondent has deserted the Petitioner for a period of at least two years.

Two years separation

- (d) That the parties have been separated for at least two years and both consent to a divorce.

Five years separation

- (e) The parties have been separated at least five years and there is no compelling reason why they should not be divorced.

The original marriage certificate or a certified copy must be filed together with the divorce petition, Court fee if payable (presently £180), Statement of Arrangements for Children (if minor children of marriage or family) and a Certificate of Reconciliation (if instructing a solicitor).

In an adultery petition, the person with whom the Respondent has committed adultery may be named as the Co-Respondent. It is not mandatory to name any Co-Respondent and the decision will depend on the particular circumstances.

The divorce petition is usually served upon the Respondent through the ordinary course of post by the Court. The Respondent has 14 days after receipt to respond to the petition by completing and returning to the Court an Acknowledgment of Service

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form. Where a Co-Respondent has been named in a divorce petition, he or she will also receive a copy of the petition and an Acknowledgment of Service form and given the opportunity to either admit or deny the adultery.

The relevant completed Acknowledgment of Service form is sealed by the Court and sent to the Petitioner (or solicitors). Where the Respondent intends to defend an answer may be filed and the petition proceeds to trial to determine whether the marriage has indeed broken down. Defended divorces are rare. If the form states the Respondent's intention not to defend, the divorce can proceed by effectively by post.

On an undefended divorce an Affidavit must be sworn by the Petitioner to verify the divorce petition and Directions for Trial by Special Procedure sought. A District Judge considers the application and if satisfied the marriage has irretrievably broken down and that the arrangements for any minor children are satisfactory, gives certificates to that effect and fixes a date for pronouncement of the first decree.

A divorce is in two parts: decree nisi pronounced by the Court upon a fixed date confirming marital breakdown and decree absolute pronounced (usually) a minimum of 6 weeks and 1 day later which finalises the divorce and dissolves the marriage contract. At that point either party is free to remarry.

The Court can also determine whether there should be any adjustment of property and/or finances by way of ancillary relief claims. Such claims are initially made in the divorce petition itself and it is customary to use the time period between decrees to negotiate settlement of such claims if possible.

There is a formal procedure to be followed for claims settled consensually or determined by the Court. No Petitioner wife will be advised to apply for her Decree to be made absolute until after financial claims are settled. Divorce alters status and until the finances are concluded, most women are better off a widow than a divorced woman in the event of their husband's untimely death. Please ask for our focus on ancillary relief claims for more information.

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