

Divorce Procedure and Other Options

There is only one ground for divorce and that is that the marriage has broken down irretrievably. The person who starts the divorce proceedings is known as the Petitioner and his or her spouse is called the Respondent.

To satisfy the Court that there has been an irretrievable breakdown the Petitioner must prove on of the following five facts:-

1. That the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent
2. That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent
3. That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately before the start of the divorce
4. That the parties to the marriage have lived apart for a continuous period of at least two years immediately before the start of the divorce and the Respondent consents to a Decree being granted
5. That the parties to the marriage have lived apart for a continuous period of at least five years immediately before the start of the divorce

Fact 1 – adultery – and fact 2 – unreasonably behaviour – are the two facts which are most often relied upon by divorcing couples and so more information in relation to these is provided below.

Adultery is an act of sexual intercourse with a person of the opposite sex. For an act of adultery to be relied upon it must have taken place no more than six months before separation or at any time after separation. It is not necessary to name the person with whom the adultery took place or involve them in the Court proceedings.

Unreasonable behaviour is where the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to continue to live with him or her. The test is subjective and the Court will consider what is unreasonable to the Petitioner. For behaviour to be unreasonable in this context it need not consist of extensive violence drug or alcohol addiction or other extreme behaviour. A combination of less obviously unreasonably behaviour can be sufficient.

If you would prefer to regularise your separation without actually divorcing there are two options available:

1. Judicial Separation – this involves a Court procedure which is virtually identical to that which applies to a divorce. The essential difference is that the Court pronounces a Decree of Judicial Separation rather than a divorce and therefore you and your spouse would remain married.
2. Separation Agreement – many couples prefer to reach an agreement about financial matters arising out of their separation without involving any Court

procedures at all. The way that this can be achieved is for them to sign a written legal document which incorporates the agreement that they have reached. Commonly such agreements deal with confirmation that the parties to the marriage are to live apart and the manner in which maintenance and or property are to be dealt with. Whilst there are no restrictions on what can or cannot be included in such an agreement it is important to bear in mind that should either person make a subsequent financial application to the Court the Court is not bound by the financial arrangements contained in the Separation Agreement.

If you have any questions please do not hesitate to contact us.