



Andrea Woelke

Andrea is an accredited expert in family law with particular expertise in international family law, child abduction and cohabitation. He takes the view that family law does not have to be about litigation in the courts, stuffy procedures and language only lawyers understand. If court proceedings are necessary he takes a robust approach without losing the overall picture of the issues including the costs of the litigation.

Andrea is a trained collaborative lawyer and works together with a variety of mediators.

Andrea regularly writes and lectures on family law. He is an expert on civil partnership and the author of the leading textbook "Civil Partnership".

There is more free information and advice on these and other topics online

www.alternativefamilylaw.co.uk

email or call to find out more without any obligation

Alternative Family Law

3 Southwark Street
London SE1 1RQ

T: 020 7407 4007

F: 020 7407 4008

E: andrea@alternativefamilylaw.co.uk



11.07

This is an outline of the law, practice and procedure in England. It should not be taken as specific advice. All families and couples are different. The law may have changed since this was written and we therefore accept no liability for inaccuracies. Where examples are given, your personal circumstances may vary slightly, but the difference may be significant for the outcome of the legal process. Contact us for specific advice on your own circumstances.



Divorce in England



Alternative Family Law

Divorce in England

Either of the spouses can start a divorce. The only ground for a divorce is that the marriage has broken down irretrievably. If you start the divorce, the only way to show that the marriage has irretrievably broken down is to prove one of five facts:

- (a) That your spouse has committed adultery and you find it intolerable to live with them.
- (b) That your spouse has behaved in such a way that you cannot reasonably be expected to live with them.
- (c) That your spouse has deserted you for two years or more.
- (d) That you have been separated for two years and you both agree to the divorce.
- (e) That you have been separated for five years.

If people do not want to wait for two years, they can only base the divorce on “adultery” or “behaviour” even if they both agree to the divorce. “Adultery” is an act of vaginal sexual intercourse by a married person with a person of the opposite sex. “Behaviour” does not need to be violence or other extreme behaviour. A combination of other behaviour can be sufficient. Often issues like working too much (or not working enough), showing too much (or too little) affection, combined with a number of other similar factors are used.

Any adultery or behaviour you want to rely on has to have happened in the six months before you separated or at any time after you separated.

Court Procedure

In addition to the application for divorce, the “petition”, there are other documents you or your solicitor need to prepare, including a statement about the arrangements of any children. None of these are of great significance for the divorce itself though.

The divorce is a two-stage process. The court will first grant a conditional divorce order, a “decree nisi” and later make that order final, “decree absolute”. The court process starts when the court gets the divorce petition and other documents and the fee of £300. It will then allocate a number to the case, open a file and send the papers to your spouse, unless your solicitor asked the court to return the papers to send them to your spouse or their solicitor direct.

Sending the Papers to the Other Spouse

When your spouse receives the divorce papers, they have to fill in a form confirming that they have received the papers and whether or not they agree with the divorce and return it to the court. The court will send a copy to you or your solicitor. If your spouse does not return the form, it may eventually be necessary to arrange for another set of the documents to be served personally, unless you can prove in some other way that they have received the petition and accompanying documents from the court. This may for example be done by a process server (usually a private detective) giving it to your spouse personally.

Conditional Divorce Order

If your spouse agrees to the divorce going ahead, you can then swear a statement confirming that everything in the divorce petition is true, whether anything in the meantime has changed and so on. With that statement, you can apply for the conditional divorce order, the decree nisi. There is no fee at that stage.

The district judge will then look at your divorce papers and if the judge agrees that you are entitled to a divorce, the court will set a date for the formal pronouncement of the decree nisi, which may be a week to a month or so after the district judge has approved your divorce. This is only the first divorce order and you remain married until the final order, the decree absolute.

Decree Absolute

You can apply for the decree absolute six weeks after the date of the pronouncement of the decree nisi. There is another fee of £40 for that application. The court should process that application within a week or so, but it often takes longer.

In all, the divorce can take as little as four to six months from start to finish. However, it can take a lot longer if either or both of you delay in taking particular steps during the proceedings, or if there are problems with the court.

Finances

The court will not automatically look at any issues surrounding maintenance, pensions or capital division, even if these claims are made in the divorce petition, which is customary. If you think that there is no way that you will be able to come to an agreement on finances, you may want to get the court involved at an early stage. There may be other reasons, such as the need for immediate maintenance or an order to freeze a bank account. You can start the financial court proceedings on the same day that you start your divorce at court or you could wait and start them at any other time during your divorce proceedings or even after the final divorce order.

If you come to an agreement, the court can approve that agreement and make an order reflecting it. This will give both of you security that there is no come-back in case one of you changes your mind. The court does not automatically rubber-stamp any agreement, but in most cases the judges approve the agreement reached. The earliest the courts can approve an agreement is after the decree nisi, the conditional divorce order, has been made. Therefore, if you want the security of a court order, you may want to consider starting a divorce earlier rather than wait for two or five years' separation.