

# THORNLEYS SOLICITORS

## GETTING DIVORCED – AN OUTLINE OF DIVORCE PROCEEDINGS



**Solicitors and  
Commissioners  
for Oaths**



**246 Dean Cross  
Road, Plymstock,  
Plymouth  
PL9 7AZ**



**Telephone:  
(01752) 406977  
Fax :  
(01752) 493440**



**E-Mail:**  
[Thornleys@thornleys.com](mailto:Thornleys@thornleys.com)



**Website:**  
[www.thornleys.com](http://www.thornleys.com)

**Thornleys Solicitors  
Ltd.**

Divorce can be a difficult and distressing experience with decisions to be made about the welfare of children, who owns what, and what is to happen to the family home. We can advise you about all aspects of divorce and assist you through the maze of decisions to be made.

Before we explain the divorce procedure, there are some basic facts which you should know:

- (i) To obtain a divorce you must have been married for at least 1 year**
- (ii) You have to show that your marriage has broken down and cannot be saved**

This can be established by proving **one or more** of the following five facts:

- (a) Your husband or wife has committed adultery and you feel That you cannot tolerate living with him or her**
- (b) Your husband or wife has behaved in such a way that you cannot be expected to live with him or her. This can cover a wide range of behaviour, for example: not showing any love, such and affection, drinking too much, being irresponsible with money, leading a completely separate life or violence**
- (c) Your husband or wife has deserted you for at least 2 years**
- (d) You and your husband or wife have lived apart for at least 2 years and both of you agree to the divorce**
- (e) You and your husband or wife have lived apart for at least 5 years. In this case, you will be able to obtain a divorce irrespective of agreement**

Once it is established that one of the above facts applies to you, you may then start divorce proceedings. This involves the following steps:

- (i) Your solicitor will prepare all the papers which need to be presented to the Court to start the divorce. These are:**
  - (a) The DIVORCE PETITION:** this tells the Court the names and addresses of both you and your husband or wife, the details of your marriage and children and includes an explanation as to why the marriage has broken down and details of the facts to show this for example details of your husband or wife's unreasonable behaviour;

- (b) If there are children under 16 or in full time education, a **STATEMENT OF ARRANGEMENTS** for the children will have to be prepared. This tells the Court about the arrangements you propose for the children after the divorce as well as factual details about the ages of the children, the schools they attend and the type of accommodation you live in. The Statement of Arrangements also includes details about how much time each parent spends with the children and who looks after them and whether these arrangements will change once the divorce has been granted. It is important to remember that children have a right to go on seeing both parents regardless of whom they live with. The interest and well being of the children are of paramount importance to the Court and the divorce may not be granted unless the Court is satisfied about the arrangements for the children;
- (c) Your **MARRIAGE CERTIFICATE** must also be submitted to the Court and will not be returned to you.

Your solicitor will ask you for all the information needed to prepare these papers and once this is done, will show them to you for your approval. They will write to your husband or wife or their solicitor informing them that you wish to bring divorce proceedings. If there are children, a copy of the statement of arrangements must be sent in order to give your husband or wife an opportunity to agree the arrangements for the children, including contact arrangements. In this letter your solicitor will also, if necessary, advise your husband/wife to consult a solicitor in another firm.

- (ii) Your solicitor will then submit all the documents to the Court which will in turn send to your husband or wife a notice explaining that divorce proceedings have been issued together with a form called an **ACKNOWLEDGEMENT OF SERVICE** which must be returned to the Court. This will tell the Court that the documents have been received and whether or not the divorce is contested.
- (iii) Once the Acknowledgement has been completed and returned, your solicitor will prepare a document confirming whether the contents of your petition and Statement of Arrangements are still correct. This document is called an **AFFIDAVIT**. You will have to swear the truth of this statement before either a solicitor in another firm or a Court Official. If you choose to swear the Affidavit before a solicitor, you will be charged a small fee. It is free of charge to swear the Affidavit in the Court Office.
- (iv) A District Judge at the Court will consider all the divorce papers and decide whether or not the divorce should be granted. If the District Judge is satisfied that it should be granted, she/he will fix a date for the first part of the divorce, called the "**DECREE NISI**", to be read out in Court. When considering whether the divorce should be granted she/he will carefully consider the statement of arrangements in respect of the children.
- (v) Only the names of the parties are called out in Court. The details of the petition are not revealed and neither you nor your husband or wife are required to attend Court. At this stage, you are still married as the Decree Nisi does not bring the marriage to an end.

- (vi) Once 6 weeks have elapsed the Petitioner may apply to the Court for the marriage to be brought to an end. This is called "**DECREE ABSOLUTE**". The Court will then send to you a certificate to confirm that your marriage has ended. Once the decree absolute has been granted, you may remarry.
- (vii) If your husband or wife does not want a divorce, they may file the acknowledgement of service form indicating that they intend to defend the divorce, they will also be required to file an answer setting out why they do not agree with the facts set out in your petition. Your husband and wife may also apply for a divorce by issuing a "**cross-petition**". If your husband or wife defends the divorce your solicitor will then discuss with you your options and the costs implications of each option.

These are the basic stages involved in a divorce but as well as the divorce itself, there are other relevant factors which you may need to think about.

### **FEES**

You will be required to pay Court fees in respect of the divorce proceedings and we will discuss this with you.

### **TIMESCALE**

From the issue of a Divorce Petition until the granting of a Decree Absolute this may take on average between six and eight months, however, there may be good reasons to delay making application for the Decree Absolute until financial matters between the Petitioner and the Respondent have been resolved which may take much longer. We will advise you about this. Similarly, if the Respondent to the Petition does not return their Acknowledgement of Service promptly or seeks to defend the proceedings then matters can take considerably longer to be concluded.

### **CHANGE OF MIND**

If you are the Petitioner in divorce proceedings, you may decide that at some stage you do not wish to proceed with your divorce.

Provided that the Decree Nisi of divorce has not been pronounced then you may dismiss the proceedings relatively simply. Once the Decree Nisi has been pronounced the situation is more complicated and you would need to discuss this with us. If you are the Respondent, once you have completed and filed your Acknowledgement of Service both the timetable for the divorce proceedings and the withdrawal or termination of proceedings are within the control of the Petitioner.

### **CHILDREN**

1. The interests and welfare of the children must always come first. The Children Act 1989 is based upon the belief that children need the love and support of their parents irrespective of whether the parents are together, and when parents split up, they should still ensure that they communicate sensibly about arrangements for the children. Consequently there is now far less intervention by the Court over arrangements for children. Wherever possible, the Court will not make an Order as it is preferable for arrangements to be agreed between the parents.

2. The Children Act introduces the concept of parental responsibility which means that parents have responsibilities towards children and not rights over them. Each parent has parental responsibility and therefore can make decisions relating to the children. Obviously it is easier and far more practical for the parent with whom the children are living to make the day to day decisions in the children's lives. The parent who has the day to day care of the children should consult with the other parent when making major decisions for the children, for example which school the child should attend. Where arrangements for the children cannot be agreed, there are a range of orders that can be made.

### **FINANCIAL MATTERS**

The best way to resolve financial matters between you and your husband or wife is to try and reach an agreement which can be put before the Court for approval. You should try and agree what will happen to your home and its contents together with any other assets which you may have and agree any payments which are to be made between you and your husband or wife. If you are unable to reach an agreement you may make an application to the Court. The Court can then make appropriate orders for maintenance payments, a lump sum payment or orders dealing with the matrimonial home and pensions.

It is important that financial matters are dealt with within divorce proceedings. This is because once divorce proceedings have been issued, both you and your spouse have the right to make financial claims against each other.

That right only comes to an end once the Court has made a Final Financial Order within divorce proceedings. Your right to make financial claims does not automatically come to an end once Decree Absolute has been granted.

With regard to financial arrangements between you and your spouse, the Court takes various matters into account when considering what Order should be made. The Court considers all the circumstances of the case, gives first consideration to the welfare of any children of the family under the age of 18 and, in particular, the Court has regards to the following matters:-

- (a) the income, earning capacity, property and other financial resources which each spouse has or was likely to have in the foreseeable future including, in the case of earning capacity, any increase in that which it would be, in the opinion of the Court, reasonable to expect a person to take steps to acquire;**
- (b) the financial needs, obligations and responsibilities which each spouse has or is likely to have in the foreseeable future;**
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;**
- (d) the age of each spouse and the duration of the marriage;**
- (e) any physical or mental disability of each spouse;**

- (f) **the contributions which each spouse has made or is likely to make in the foreseeable future for the welfare of the family, including any contribution by looking after the home or caring for the family;**
- (g) **the conduct of each spouse, if that conduct is such that it would be in the opinion of the Court inequitable to disregard;**
- (h) **the value to each spouse of any benefit which one spouse, because of the divorce will lose the chance of acquiring (most usually pension provision);**

The aim of the Court is to achieve fairness. Often the key factor is the reasonable needs of yourself and your spouse.

In most cases, the Courts no longer have powers to make Orders for child maintenance except by agreement; an application to the Child Support Agency has to be made for child maintenance to be assessed.

You may wish to take advantage of a process called mediation, which involved an impartial third person assisting those involved in family breakdowns to communicate better with one another and help them to reach their own agreed and informed decisions about some, or, all of the issues relating to, or arising from, the separation or divorce, including children, financial or property.

One advantage of reaching an agreement through mediation is that it is almost always considerably cheaper because it does not involve going to Court.

Another advantage of reaching agreement through mediation is that such agreements usually last and you will therefore be more likely to get on better with your spouse in the future. There are a number of different organisations which carry out mediation. Please let me know if you would like further details.

#### **WELFARE BENEFITS AND ADVICE**

You may become eligible for welfare benefits as a result of your marriage breakdown and we will discuss this with you and if appropriate refer you to an appropriate Agency for further assistance.

#### **MAKING A WILL**

It is important to remember that until Decree Absolute you are still married to your husband or wife. In the event of your death, he or she would inherit under a Will anything left to your husband or wife. If you die during the course of divorce proceedings without leaving a Will, you will die intestate and your husband or wife will automatically be a beneficiary of your estate. It is therefore important that you consider making a Will or altering an existing Will as soon as you have decided to commence divorce proceedings. Thornleys Wills, Trust and Tax Department will be happy to assist and advise you about this. If you own property jointly with your husband or wife they may automatically inherit your share of the property even if you make a Will. This can be altered and your solicitor will advise you about this.

## **CHANGING YOUR NAME**

You may wish to change your name once you have been divorced. This can be done by a change of name deed which we will be happy to prepare for you. If you wish to change the surname of your child, you will only be able to do this with written permission of the other parent or if this is not forthcoming, the approval of the Court. In this event, the Court will have to be satisfied that it is in the best interests for the child to have his/her name changed, and again we will be happy to advise you about this.

## **YOUR HOME**

During the course of the divorce proceedings it may be necessary for your house to be sold in order to achieve an agreed division of the assets of your marriage. Thornleys Conveyancing Department will be pleased to advise you about the sale of a property and purchase of a new one.

If the matrimonial home is owned in the sole name of your husband or wife, it is possible for your husband/wife to sell the property without your knowledge. You can prevent this from happening by registering a notice at the Land Registry, this will warn any prospective purchasers that you have an interest in the property and prevent any sale. We can register the notice on your behalf and we will discuss this with you at your first meeting. The notice against the property will only be valid until Decree Absolute is granted, you will need to register a pending land action before Decree Absolute is granted.

If the matrimonial home is owned jointly by you and your husband or wife you can hold your half share of the property in two different ways:-

**(a) joint tenants** - If you and your husband or wife hold the matrimonial home as Joint Tenants should your husband or wife die, you will automatically inherit their half share of the property and vice versa. Neither you nor your husband/wife can leave your half share of the property in your Will to a third party.

**(b) tenants in common** - If you and your husband/wife hold the property as Tenants in Common you each hold your half share of the property separately and you can leave your half share of the property to anyone you choose in your Will. If you hold the property as Tenants In Common you must make a Will otherwise your property and assets will be distributed in accordance with the Intestacy Rules and your husband would receive some of your property or assets that you own, this could be a substantial amount



We can obtain confirmation from the Land Registry whether you hold the property as Joint Tenants or Tenants in Common. If you hold the property as Joint Tenants we can send a Notice of Severance to your husband/wife which will then enable you to leave your half share of the property in a Will to a third party. If a Notice of Severance is sent you must make a new Will otherwise your husband/wife may inherit your half share of the property under the Intestacy Rules.

At Thornleys, we are committed to providing the best possible professional service to all of our clients, both business and personal. We have produced our Factsheets and Articles as part of this service but they are intended only as a guide to highlight general issues which may be of interest to our clients. They are not a substitute for full professional advice. Specialist advice and assistance should be sought in relation to any particular needs or circumstances. Accordingly, no responsibility for loss, or consequential loss however occasioned to any person acting or refraining from acting as a result of any material in this publication can be accepted by Thornleys, howsoever caused.

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Our Family and Child Care team at Thornleys have the specialist knowledge and expertise in these matters. They can advise and help you with your specific needs and requirements.

#### **FOR FURTHER INFORMATION:**

On the Children Act please see our **Factsheet 14 - The Children Act, 1989** on Wills generally please see our **Factsheet 1 - Wills** and on appointing Guardians please see our **Factsheet 2 - Appointing Guardians in your Will**

#### **Contact a member of our Family Department at:**

Thornleys, Solicitors,  
246/247 Dean Cross Road,  
Plymstock, PLYMOUTH, PL9 7AZ  
**Telephone: (01752) 406977**  
**Fax : (01752) 493440**  
**E-Mail: [Thornleys@thornleys.com](mailto:Thornleys@thornleys.com)**  
**Visit our Website: [www.thornleys.com](http://www.thornleys.com)**

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