

Divorce – the main suit

Lawyers call the proceedings which result in the pronouncement of a Decree Absolute (the document which formally terminates your marriage) the main suit. Divorce proceedings are commenced by a petition. The person commencing the proceedings is called the Petitioner and the other spouse the Respondent. The only grounds for divorce in this country is that the marriage has broken down irretrievably. In order to prove that a marriage has broken down irretrievably the Petitioner will have to allege, and prove, one of five facts. They are:

- That the Respondent has committed adultery and the Petitioner finds it intolerable to live with him/her.
- That the Respondent has behaved so unreasonably towards the Petitioner that the Petitioner cannot be expected to live with him/her.
- That the Respondent has been in desertion of the Petitioner for a period longer than two years.
- That the parties have lived apart for two years and both of them consent to a divorce.
- That the parties have lived apart for five years in which case the Respondent's consent to the divorce is unnecessary.

If you are the Petitioner we will draft the petition on your behalf. We will send it to you for your approval before sending it to the Court. It makes good sense to correspond with your estranged husband/wife prior to the commencement of proceedings with a view to ensuring that the proceedings, when commenced, will proceed on an undefended basis.

Once you have approved the petition we will send it to the Court. The Court will send a copy to your estranged partner together with a form called the Acknowledgement of Service. The Acknowledgement of Service is a questionnaire. One of the questions invites your estranged partner to indicate whether or not it is his/her intention to defend the proceedings. In many cases, particularly where there has been appropriate discussion between solicitors before commencement of proceedings, that question will be answered in the negative and the main suit will proceed thereafter as an undefended divorce.

Once your husband/wife has returned the Acknowledgement of Service to the Court a copy will be sent to us. We will then ask you to call to see us so that we can put in hand the next stage of the process.

The next stage requires that you swear or affirm by affidavit to the truth of the contents of your petition. The affidavit (called a special procedure affidavit) is then sent to the Court and all the papers are placed before a Judge. If the Judge is satisfied that the grounds for divorce is adequately made out, he or she will fix a date for the pronouncement of the Decree Nisi. Application can be made by you for the Decree Nisi to be made absolute after a further six weeks have passed. If you do not apply for the Decree Nisi to be made absolute then your partner may make that application once a further three months have gone by. It is the Decree Absolute that brings your marriage to an end.

It is never easy to estimate the amount of time involved in Court proceedings. In general terms, though, representing a Petitioner in an undefended main suit will take about four hours of our time to include the preparation of all the Court documents and all ancillary correspondence, meetings, telephone calls and so on.

There is much less work to be undertaken on behalf of a Respondent to divorce proceedings. The main suit, including correspondence and completion and lodgement with the Court of the Acknowledgment of Service does not usually occupy more than an hour.

The advantage of being the Petitioner is one of control of the proceedings. The disadvantage is one of cost but the Court can order (and frequently does order) the Respondent either to pay or to contribute to the Petitioner's costs. Remember, though, that there is a single pot of assets for the Court to divide between you and your estranged partner and the more you spend on the main suit the less there will be for the Court to divide. That is why we will usually recommend correspondence with your estranged partner or his/her solicitors with a view to agreeing how the main suit should proceed.

Partners: Robert Warner LL.B. | Jonathan Healey B.A. | Nigel Fenton B.A.

Consultant: Colin Rundle LL.B. Associate: Kathryn Major B.A.

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