

Divorce



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How do I start a divorce?

In order to apply for a divorce, you must complete a petition. Before you can apply, you must have been married for at least one year.

There is only one ground for divorce in England and Wales, which is that your marriage has broken down irretrievably. In order to support that ground you must cite one of five facts:

1. Your spouse has committed adultery;
2. Your spouse has behaved unreasonably;
3. You have been separated for two years and your spouse consents to a divorce;
4. Your spouse has deserted you for a period of two years or more; or
5. You and your spouse have lived apart for a period of five years or more.

You will need to have your original marriage certificate (or obtain an official copy from the General Register Office) and pay a court fee, which currently stands at £550.

Most divorces are carried out as a paper exercise and you and your spouse will generally not be required to see a judge.

What is the procedure for divorce?

Once a petition has been completed, it should be filed at court together with your marriage certificate. The court will then send a copy to your spouse together with a form known as an acknowledgement of service form, for them to complete. The acknowledgement of service allows your spouse to confirm whether they intend to defend the divorce

and also deal with the question of costs. The acknowledgement of service should be returned to the court and the court will send you a copy.

If your spouse indicates that they do not intend to defend the divorce you may then apply for your decree nisi. This involves the completion of two forms, a statement in support of your petition and the application for decree nisi itself. The statement in support confirms that the contents of your petition remain true and that you wish to proceed with the divorce.

What is the decree nisi?

The decree nisi does not bring your marriage to an end, however, it confirms that the judge has looked at your case and considers that you are entitled to a divorce.

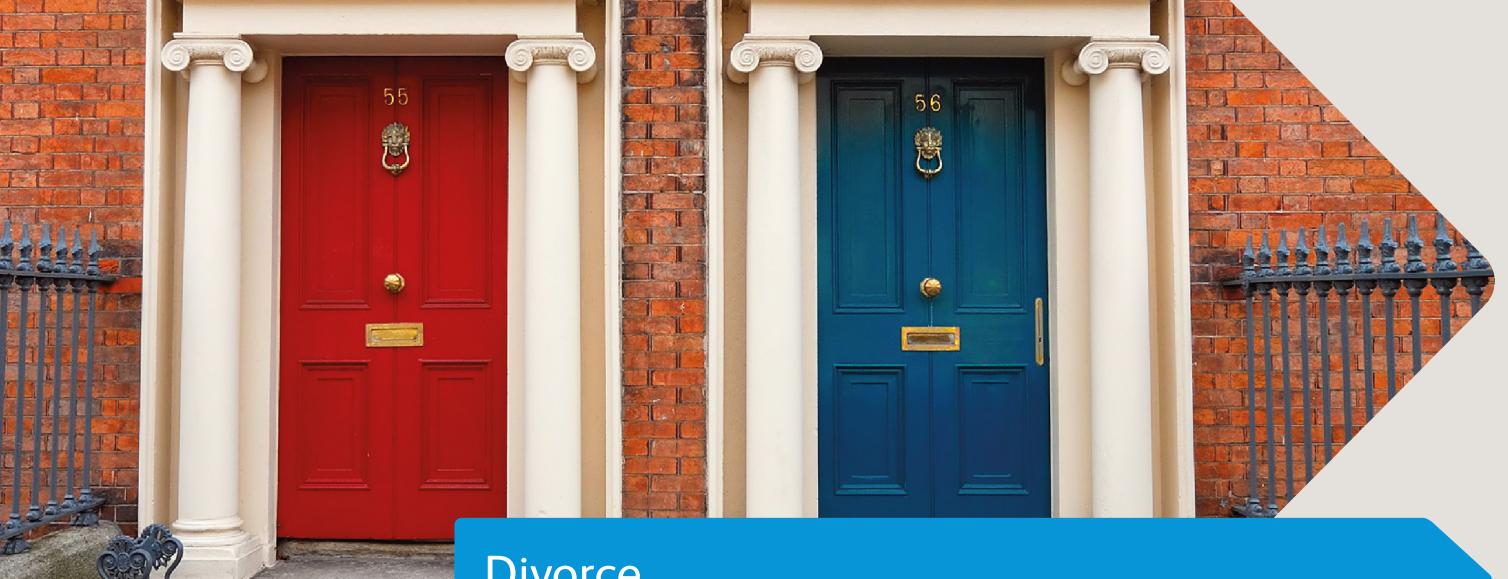
How do I end the marriage?

You will have to wait for six weeks after the decree nisi is granted before you can apply for the decree absolute, which officially ends the marriage. If you do not apply for the decree absolute, your spouse can apply four and a half months after the date of the decree nisi. Before making an application for decree absolute, it is advisable to speak with a solicitor as there can be financial implications of bringing a marriage to an end.

Who pays the costs?

Within your petition you are able to ask that your spouse meet the costs of the divorce, although you are not obliged to and often couples come to an agreement as to how the costs will be met. Any costs sought could

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include not only the court fee, but also the fees charged by your solicitor. If you do claim costs, and your spouse objects to paying them, it may be necessary for you both to attend court when the decree nisi is granted for a judge to make a decision as to who should pay what. More often than not, however, a compromise can be reached meaning that attendance at court is not necessary.

How long does a divorce take?

Whilst it is difficult to be accurate, provided all steps are completed promptly, it will usually take somewhere between four and six months to divorce. However, if after taking legal advice you decide to delay application for the decree absolute, this period will be extended, usually until financial matters relating to the marriage are completed.

What happens if my spouse defends the divorce?

If your spouse indicates on their acknowledgement of service that they intend to defend the divorce, they will have to file an answer to the petition within 28 days of the date it was sent to them. The answer will need to set out why your spouse does not agree to your petition, this may be because they deny having committed adultery or behaving unreasonably. Within their answer, your spouse may cross-apply to divorce you. The court will then list a hearing to determine whose petition should prevail.

Defended divorces are very rare as they often result in the same outcome, i.e. the parties are divorced, for a much higher cost.

Does a divorce affect my Will?

Upon a decree absolute being granted, any provision in a person's Will relating to their ex-spouse will fail unless your Will makes specific provision for what should happen upon divorce. In addition, if you have appointed your ex-spouse as an executor or trustee of your Will, this appointment will also be invalidated by the granting of a decree absolute.

Accordingly, it is paramount when divorcing that you review your Will and take legal advice as to whether it needs to be revised.

The information contained in this document provides background information only. The document may be misleading if relied upon as an exhaustive list of the legal issues involved. If any matter referred to in this document is sought to be relied upon, further information should be sought.