

GUIDE TO GETTING A DIVORCE

At Gittins McDonald we understand that getting a divorce can be an unpleasant experience, however we aim to take a non- confrontational approach in order to achieve the best outcome and minimise the stress for you.

When you visit us for the first time, we will take your instructions in relation to the breakdown of your marriage in order to assess the appropriate way forward. In order to be granted a divorce, you must demonstrate that your marriage has suffered an 'irretrievable breakdown' in other words that your marriage is beyond repair due to one of the following:

1. Your husband or wife has committed adultery (even if you are separated).
2. Your husband or wife's behaviour is such that you cannot reasonably be expected to live with them;
3. Your husband or wife left you at least two years ago without good reason;
4. You have been separated from your husband or wife for two years and they agree to the divorce;
or
5. You have been separated from your husband or wife for five years or more.

Once the grounds for divorce have been established, we will draft a Petition and let you have a copy for your approval. We will then write to your husband or wife informing them that you are planning to start divorce proceedings (and if possible a copy of the draft petition) and advising them to seek independent legal advice if they have not already done so.

ABOUT THE PETITION

The Petition sets out a number of facts such as: the names of you and your spouse, where and when you were married, whether there are any children and what you are asking the court to do. That includes whether you will be asking your husband or wife to pay for the costs of your divorce and any financial claims for you or your children. Once the Petition is ready we send it to the Court. There is usually a fee payable which we will ask you to pay beforehand. Once the court receives the papers they allocate a case number and stamp the Petition with a Family Court stamp. We call this issuing the Petition. The Court will then send a copy to your husband or wife for a response. They then have 14 days to file their Acknowledgement of Service (which is enclosed with the Petition) with the Court. If your husband or wife cannot be traced or fails to return the Acknowledgement of Service, we will advise on the methods of overcoming this.

Once this has been received you will then need to confirm your intention to proceed with the divorce application by making a statement, you do this so that the court has some evidence on it's file without you actually attending. Your application is then lodged with the Court.

DECREE NISI

Once the Court is satisfied that you are entitled to a divorce, it sets a date and time for the Judge to pronounce the 'Decree Nisi'. Your attendance at Court will not be required; it is simply approval of the divorce papers. You are not yet divorced at this stage.

If you and your husband have yet to agree who should pay the legal costs of the divorce, the Judge pronouncing the Decree Nisi will make the decision for you.

DECREE ABSOLUTE

Six weeks and one day following pronouncement of Decree Nisi, the Petitioner will be entitled to have the Decree made Absolute. This legally dissolves the marriage; however it is preferable in some cases to wait until financial matters have been resolved before finalising your divorce.

CHILDREN

There is no longer a form relating to child arrangements within divorce proceedings and therefore if you require a Child Arrangements Order in relation to Residence or Contact you will need to make a separate application to the Court. Should you require advice in relation to your children, we would be happy to discuss this in more detail in order to offer tailored advice.

AND FINALLY...

We understand how difficult separation can be and the bewilderment that you may be feeling. We will listen to you and help you stay positive through a time when changes may come quickly and you may need the support of your friends and family more than ever.