

Step by Step Guide to Divorce

Here you will find detailed information that will hopefully answer many of the questions you have about the divorce process and about other Family services provided by Naphthens.

Don't forget to take a look at our [FAQ section](#) and our [Legal Glossary](#) which you may also find useful and of course, if you would like to talk to someone for advice or to arrange a consultation please contact a member of the team.

Grounds for Divorce

To obtain a divorce it must be established that a marriage has irretrievably broken down. The law prescribes 5 possible ways in which the irretrievable breakdown of a marriage can be proved. These are commonly known as the grounds for divorce.

The vast majority of divorce cases are undefended and the proceedings are processed as a paperwork exercise without the necessity of either party attending Court.

Grounds for divorce are:

- Adultery
- Unreasonable behaviour
- Desertion for a continuous period of at least 2 years
- 2 Years separation coupled with consent
- 5 years separation

A Guide to Divorce (Undefended)

The vast majority of divorces are undefended and the steps listed here apply to undefended divorces. A different procedure applies where a divorce is defended.

Step 1 - Preparing and filing a divorce application

The Applicant completes an application form setting out which of the 5 grounds for divorce is relied upon. The Application is sent to the Court with the marriage certificate and Court fee.

Step 2 - Service of the Application

The Court normally sends out papers to the Respondent with an Acknowledgment of Service form which the Respondent should complete and return. The Applicant can't proceed until the Court is satisfied that the Respondent has been served - this is normally proved by completing and returning the Acknowledgment of Service form.

If the Respondent fails to return a completed form it will be necessary to make other arrangements. This is usually personal service of the papers i.e. arranging for either the Court Bailiff or a Process Server to hand a further set of papers to the Respondent. The person who effect's service will then provide a statement to the Court confirming they have done so and the Court will treat the papers as served. Failure by the Respondent to file the Acknowledgment of Service will inevitably result in some additional delay and costs.

Step 3 – Acknowledgment of Service of the Application

The Respondent is required to return the Acknowledgment of Service form within 7 days, confirming receipt and indicating whether they wish to dispute the proceedings and whether they are prepared to pay the divorce costs.

Step 4 – Applying for Decree Nisi

Once service is proved (either by receipt of the Acknowledgment of Service or Statement of Service) the Applicant then applies to the Court for Decree Nisi. There are 2 forms - the Application itself and a Statement in support, confirming the truth of what is in the divorce papers.

Step 5 – Pronouncement of Decree Nisi

After lodging the request for Decree Nisi there is usually a waiting time while the Judge considers the papers. If the Judge is happy with the documentation the Court will send out notice of a date when a Decree Nisi will be pronounced in Court. It is not usually necessary for the parties to attend Court when the Decree Nisi is pronounced, although this may be required if there is a dispute about costs.

Step 6 – Application for Decree Absolute

6 weeks and 1 day after the Decree Nisi is pronounced the Applicant can apply for the Decree Absolute. There is a standard application form. Only when the Decree Absolute has been issued is the divorce finalised. Parties sometimes prefer to defer applying for the Decree Absolute if financial aspects of the divorce have not been resolved and will await an outcome on finances before finalising the divorce.

Please talk to us about [fixed fees](#) available for divorce.

A Guide to Financial Settlements (including Pensions and Property)

The divorce itself is usually undefended and straightforward – sorting out financial settlement on divorce is often more difficult. If agreement can't be reached then an application can be made to the Court.

Negotiating a Financial Settlement

It may be possible to reach an agreement with regard to your property and finances.

If agreement is reached without the benefit of legal advice, then your solicitor can be asked to draw up the agreement in such a way that it can be converted into a Court Order. A Court Order is legally enforceable and final. It is important to obtain this if you want to ensure any agreement is complied with, and to protect against possible future claims. Before making an Order the Court requires a summary of you and your partner's financial circumstances to ensure the Order is fair. Where both parties have the benefit of legal advice the Court rarely refuses to make an Order which has been agreed by the parties.

It is desirable, prior to reaching any agreement, for each party to have full knowledge of the other's financial position. If negotiation is through solicitors then each party's solicitors will request full disclosure from the other side before embarking upon detailed negotiations and approving a proposed settlement.

If agreement can't be reached then it may be necessary to issue Court proceedings. Prior to this your solicitor will have advised you, based upon available information, as to the range of outcomes.

Court Proceedings

Before commencing Court proceedings, most cases, with only a few exceptions, must be referred to mediation. Only if mediation is unsuccessful or is inappropriate, can an application to the Court be made. Commencing Court proceedings doesn't always mean the case will be decided in Court by a Judge. It's possible that at some stage after proceedings commence, agreement will be reached as a result of ongoing negotiations. If this happens Court proceedings can be concluded and an Order prepared by agreement for the approval of the Judge, without the need to attend Court.

A Guide to the Court Application Process

Step 1 – Issuing an Application

Either the Applicant or Respondent starts proceedings by issuing an application. (A fee is paid to the Court when the form is lodged).

Upon receipt of the application the Court issues a time-table requiring each party to file and serve financial statements within a specified period. Financial statements are provided on a standard form (Form E). The form requires full disclosure of all income and assets and the production of various documents such as bank statements, P60s, business accounts, pension transfer values etc. The timetable usually allows for either party to raise questions they may have about the other's financial statement, prior to the first Court appointment. Each party will also be asked to provide a Statement of Issues and Chronology to assist the Court.

The timetable also sets a date for the First Court Hearing – usually around 3 months after the application is issued, to allow for the preparation of financial statements and any negotiation.

Step 2 – First Hearing

The first Court hearing is known as the First Directions Appointment (FDA). It's usually a short hearing when the Judge considers each party's financial statements and questionnaires and gives direction as to what further evidence, if any, is needed. The Court will set a time limit for the filing of any further evidence and will adjourn for a further hearing.

Step 3 – Second Hearing

The second hearing is known as a Financial Dispute Resolution Hearing (FDR). This is normally around 8 – 10 weeks after the first hearing.

At the FDR each party's lawyers are asked to summarise their client's positions. The Judge will usually indicate the sort of Order he would be inclined to make at a final hearing. The Judge will urge the parties to try to reach agreement and ensure that they are aware of costs being incurred. Many cases settle at the FDR because parties review their position in the light of the Judge's indications. If agreement is reached then this agreement can be incorporated into an Order and the Judge can be asked to approve the Order at this hearing.

The Judge can't compel parties to reach agreement and if agreement isn't reached the Judge will order the case go to a final hearing. If this happens, then the Judge who dealt with the FDR can't sit at this final hearing.

The Judge at the final hearing won't be aware of the indication given by the Judge at the FDR, so will approach the case completely afresh.

Step 4 – Final Hearing

If the case proceeds to a final hearing then each party gives evidence on oath and will be cross-examined by the other party's lawyer. At the end of the hearing the Judge will make a decision as to the Final Order.

The Judge has wide ranging discretion and will make the Order that he considers to be fair. Given that the Judge has discretion, in most circumstances it's unlikely that an appeal against the decision will be realistic.

Given the uncertainty of the outcome it is preferable for clients to reach agreement prior to a final hearing if possible.

Napthens is able to advise and represent you in relation to the financial aspects of a divorce. Please ask about the availability of fixed fees for each stage of a financial a financial application.