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Family Law Web Guide

Guide to Divorce and Separation

A guide by Guillaumes Solicitors

Introduction

The breakdown of a relationship can be a difficult and challenging time. The pressure and anxiety of splitting up, applying for divorce, making financial arrangements, while holding down a demanding job and worrying about the future can be very stressful.

If you have not done so already, it is essential to obtain specialist legal advice to help you make sense of what is happening, decide on the best way forward, and how to achieve the best possible outcome.

Legal advice is crucial to help and support you to decide how to go forward with divorce, your current financial situation, division of property and assets of the relationship, and advising on the best way to resolve any issues concerning any children. Legal advice is also crucial to assist you in having discussions with your partner on any of these issues.

This guide explains the key steps in obtaining a divorce or separation, as well as the key steps in dealing with disputes over finances, and agreeing arrangements for any children.

In this guide we use the terms 'partner' to mean husband, wife or civil partner and 'married' includes being married or in a civil partnership.

Our divorce and family law team

The divorce and family law team at Guillaumes will ensure that you receive expert legal advice to see you through relationship breakdown.

Carolynn Tan

Carolynn is a partner and head of the family team at Guillaumes. Carolynn specialises in family law, particularly financial issues on divorce. She is experienced in all areas of relationship breakdown, including divorce and disputes over property on behalf of married and unmarried couples. Carolynn is a member of the national family law group, Resolution, and a member of the Law Society's family law panel.

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Emma Newman

Emma specialises in all areas of family law, including divorce, civil partnership dissolution, resolving disputes concerning children and financial disputes for married and unmarried couples. Emma, a partner in the firm, is a member of the Law Society's family law panel and an accredited member of Resolution.

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Jemma Slavin

Jemma is a solicitor and an associate at Guillaumes. She is a family law specialist, and deals with divorce, matrimonial finance and children as well as issues relating to cohabiting couples. Jemma is also a member of Resolution.

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Guillaumes have two offices, the family team is based at Ibex House, Baker Street, Weybridge, Surrey.

Divorce

The court will only grant a divorce if a judge agrees that the marriage has broken down irretrievably and this requires you to provide evidence on any one of the following grounds:

- adultery (this cannot be relied upon by civil partners)
- unreasonable behaviour
- desertion by your partner for at least two years
- two years' separation, if both parties agree to divorce
- five years' separation, if there is no agreement to divorce

If you are applying for divorce you are the petitioner, and you must set out your evidence for divorce in a petition.

If there are any children you must also complete a statement as to the arrangements which have been made for the children. The other partner is called the respondent.

Sending the petition and children form to the court begins the divorce process. The respondent must then tell the court whether or not they want to defend the divorce.

In the vast majority of cases the divorce will not be defended and you can apply for the first stage in the divorce known as decree nisi. It is up to the judge to decide whether you have proper grounds for divorce and are entitled to a decree nisi.

The judge will also consider the arrangements for the children, and can if necessary order further evidence to be filed or call both parties to court to explain the arrangements.

After decree nisi there is a waiting period of six weeks and then you can apply for the final stage in the divorce called decree absolute.

When you receive the decree absolute you are no longer married. The decree absolute certificate is an important document, and you will need to produce it if you remarry.

Any financial order made will only become enforceable after the decree has been made absolute.

Separation

Some couples separate before considering whether they want to divorce. Separation usually involves living apart, but it is possible to live separately in the same house provided you no longer sleep and eat together or do any domestic chores.

It is possible to live separately without any agreement as to property, children or other issues.

However if you wish to separate it is advisable to enter into a separation agreement which will provide evidence of the date of separation, and can also provide for a divorce after a two year period, and also set out the terms for financial separation. This document is called a deed of separation, and whilst it is not necessarily binding on divorce, to ensure that its terms are endorsed by the court on divorce, it should be prepared by a solicitor and both parties should be represented by a solicitor.

A separation deed may well be followed by a judge if its provisions are found to be fair in the circumstances of the case.

Financial Process

The court now expects divorcing couples to follow a protocol and explore the scope for a mediated outcome. To this end, either partner is expected to attend a mediation information meeting to determine whether or not their case is suitable for mediation, before issuing a court application.

If both partners wish to attempt to resolve matters without the court's involvement, both parties are expected to provide to the other full details of all their property, assets and income. This is usually done by completing and exchanging the court Form E which must be accompanied by:

- property valuations
- mortgage statements
- insurance policy valuation
- 12 months' bank statements
- business accounts
- pension valuations
- payslips and P60
- any other relevant financial information

Once financial information is exchanged, either partner can make an offer to settle financial matters. If agreement is reached then a financial order can be drawn up and submitted to the court for approval. In this event no court attendance is required.

Financial Proceedings

Financial proceedings are separate from the divorce proceedings, and are necessary if agreement cannot be reached.

To start these proceedings Form A must be filed with the court.

The court then issues directions for both parties to follow, which include exchange of Form E and financial documentation. The court also lists a first directions appointment hearing (FDA). This is used as a 'housekeeping hearing', to ensure that all financial information has been disclosed supported by documentation. If not, the judge can make orders for disclosure, and for valuations of properties.

If agreement is reached before the FDA, a financial order can be drawn up and submitted to the court for approval. In this event no court attendance is required.

If agreement cannot be reached then the court will list another hearing called a financial dispute resolution hearing (FDR). The purpose of this hearing is for the judge to give input into the case, to assist the parties in reaching an agreement at court.

If agreement still cannot be reached the court will list the matter for a final hearing. At a final hearing the judge hears evidence from both parties and imposes a decision which is binding on the parties.

The court can make financial orders which include:

- payment of a lump sum from one party to the other
- transfer of property from one party to the other
- sale of property, which can include the family home
- pension sharing order
- maintenance payments from one party to the other

Financial Remedy

Either party regardless of who initiated the divorce proceedings can claim financial remedies against the other. This may include the sale or transfer of a property, a lump sum payment, maintenance and/or a pension sharing order. These claims can be made at any time, even long after decree absolute.

If your partner issued the divorce proceedings then the 'prayer' for financial remedies will be included in the divorce petition, and even if your partner remarries without making a formal application, your partner can still apply for financial remedies at a future time.

If you are the respondent in the divorce proceedings and you remarry without first making a formal application for a financial remedy, then you would be debarred from making a claim in the future.

If you need help to decide whether to apply for a financial order then it would be wise to seek legal advice.

Divorce & Children

When a relationship breaks down it is vital that parents are able to put their differences aside to agree the arrangements for their children. It is important to ensure that children have a loving relationship with both parents.

On divorce the court has a duty to consider the arrangements for the children.

If agreement can be reached as to the arrangements for where the children will live, and contact, the court is unlikely to exercise any of its powers under the Children Act.

If agreement cannot be reached the court is likely to call both parents to court so it can decide whether it does need to make any orders under the Children Act.

Before any court application for an order under the Children Act can be made, it is necessary for both parents to consider whether their case is suitable for mediation. If it is suitable then both parents can attend mediation with a view to reaching agreement over arrangements for children.

If it is not suitable for mediation then either parent can apply to the court for an order under the Children Act:

- Residence order: This order determines which parent the child is to live with.
- Shared residence order: This order is only suitable where there is some level of co-operation between the parents.
- Contact order: This order determines the level of contact between the absent parent and the child. The order can provide for contact only under supervision if the child is at risk of harm.

Any court proceedings involving children are likely to be stressful and emotionally demanding. A solicitor can help you by providing practical and professional advice with a view to reaching a solution that is in your children's best interests. Even if you feel you have no alternative but to go to court, the experience of a family solicitor acting for both parents may help to settle the problem before it goes that far.

It is worth remembering that although your marriage or relationship may have ended, your former partner will continue to be a parent with you for the rest of your life. Although it may be difficult, exploring every possible way to work out a solution between you, with your solicitor and perhaps through mediation, is the best way to protect your children from the anxiety of divorce.