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Family Law

Ways Forward on Separation v1

Call the Family Team on 01302 640 409

Email family@taylorbracewell.co.uk

Visit www.TaylorBracewell.co.uk

Partners

Mark A Beresford, Sharon M Beck
Alison A V Straw, Peter H Caswell
Consultant - Ian D Potter





Ways Forward on Separation

Divorce

There is only one ground for divorce and that is that the marriage has broken down irretrievably. The person who starts the divorce proceedings is known as 'the Petitioner' and his/her spouse is called 'the Respondent'.

To satisfy the court that there has been an irretrievable breakdown the Petitioner must prove one of the following five facts:

- (a) That the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent.
- (b) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.
- (c) That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately before the start of the divorce.
- (d) That the parties to the marriage have lived apart for a continuous period of at least two years immediately before the start of the divorce and the Respondent consents to a divorce.
- (e) That the parties to the marriage have lived apart for a continuous period of at least five years immediately before the start of the divorce.

Fact (a) - 'adultery' - and fact (b) - 'unreasonable behaviour' - are the two facts which are most often relied upon by divorcing couples.

'Adultery' is an act of sexual intercourse with a person of the opposite sex. For an act of adultery to be relied upon it must have taken place no more than six months before separation or at any time after separation. It is no longer necessary to name the person with whom the adultery took place or indeed to involve them in the Court proceedings.



'Unreasonable behaviour' is where the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to continue to live with him/her. The test is subjective and the Court will consider what is unreasonable to the Petitioner. For behaviour to be 'unreasonable' in this context it need not consist of extensive violence, drug or alcohol addiction or other extreme behaviour. A combination of less obviously unreasonable behaviour can be sufficient.

Regularising your Separation

If you would prefer to regularise your separation without actually divorcing there are two options available:

1. Judicial Separation;
2. Separation Agreement.

Judicial Separation

This involves a Court procedure which is virtually identical to that which applies to a divorce. The essential difference is that the Court pronounces a Decree of Judicial Separation rather than a divorce and therefore you and your spouse would remain married.

Separation Agreement

Many couples prefer to reach an agreement about financial matters arising out of their separation without involving any Court procedures at all. The way this can be achieved is for them to sign a written legal document which incorporates the agreement they have reached. Commonly, such agreements deal with confirmation that the parties to the marriage are to live apart and the manner in which maintenance and/or property are to be dealt with.

There are no restrictions on what can or cannot be included in such an agreement. If one of the parties fails to comply with the terms of the Separation Agreement, the other party can sue for breach of contract. In any enforcement proceedings, the Separation Agreement will not be held to be binding unless the parties gave full and frank disclosure of their financial circumstances when entering into the Agreement.



It is important to bear in mind that should either person make a subsequent financial application to the Court, the Court is not bound by the financial arrangements contained in the Separation Agreement.

Mediation

Mediation is a process in which an impartial third person assists those involved in family breakdown to communicate better with one another and to reach their own agreed and informed decisions about some or all of the issues relating to or arising from the separation, divorce, children, finance or property. A Mediator will set up joint structured meetings with a view to parties reaching their own decisions. This reduces the chance of damaging or expensive court proceedings. The Mediator will see you for an initial appointment on your own to assess whether or not your case is suitable for Mediation.

Collaborative

It may be appropriate for you to address the issues relating to the separation such as finance and the children through the Collaborative Family Law Process whereby the parties and their respective Collaborative lawyers agree not to go to court but instead meet round the table and work through the issues face to face until an agreement is reached. This can benefit the parties as they are not in conflict and are working together to find solutions without threatening to go to Court. The parties benefit from each having their own lawyer present to negotiate and give legal advice at the meetings. Legal aid is not available for this process.

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