

Family Law - Divorce FAQ

We have only been married a short time when can I start a divorce ?

You cannot start a divorce until you have been married for at least 12 months and you must show that the marriage has broken down and cannot be saved

How do I show the marriage has broken down?

The law says you may be able to get a divorce if you can show one of the following:

1. Your partner has slept with someone else and you find it difficult to carry on living with him or her ["adultery".]
2. Your partner has behaved in a way that makes you think you can't carry on living together ["unreasonable behaviour".]
3. You and your partner have been separated for at least 2 years before you started the divorce and your partner agrees that you should both divorce.
4. You and your partner have been separated for at least 5 years before you started the divorce, [your partner does not have to agree to the divorce]
5. Your partner has deserted you at least 2 years before you started the divorce.

Your solicitor can help you decide which of these is the best one for your case, use the search tool on the site and enquire with your nearest firm.

6. What if we can't carry on living together, but we don't want a divorce?

You can apply to the court for a separation, this is known as a "Judicial Separation" or you can simply decide to separate without involving the court.

7. What do I need to prove to get a legal separation?

You need to prove one of the same grounds as for divorce. You do not need to have been married for 12 months or more

8. Can we just decide to separate without involving the courts?

Yes.

But, the advantage of using the court for a legal separation is that you can then also sort out any disagreements about who is to care for the children and also disagreements about dividing the money and property. A court order will stop your partner from breaking the agreement.

If you and your partner can agree about money matters and the children you may still want your solicitor to draw up a document to show what has been agreed, this is called a "Deed of Separation". For this you will not need to involve the court, only a solicitor is required.

9. What is a Decree Nisi?

This tells you that your divorce is almost completed.

When the court gives you your Decree Nisi you have to wait 6 weeks and 1 day before you can make your divorce final. This is to allow time for anyone who objects to the divorce to tell the court why they object.

After 6 weeks and 1 day you can apply for the "Decree Absolute". This means your divorce is completed and you are no longer married to your partner.

In judicial separation proceedings you obtain a "Decree of Judicial Separation" instead of the Decree Nisi & Absolute.

You are then legally separated but remain married

10. My partner has started the divorce proceedings. What should I do?

If your partner starts the divorce you will be sent copies of the divorce papers by the court. This will include an "Acknowledgment of Service" form.

You must fill in this form to say whether or not you agree to the divorce, you must then send this form back to the court.

If you do not want a divorce you may need the help of a solicitor to defend the divorce. You should put on the Acknowledgment of Service form that you object to a divorce. You are then required to file an "Answer" explaining why you object.

11. My partner owns the property in which we live/or only their name is on the rent book. Will I have to leave if we separate?

Not necessarily.

If your partner owns the property in which you live and you and your partner are married then your solicitor can protect your interest by registering a "Notice" on the title deeds to the property. This warns other people that you have an interest in the property.

If your partner tries to sell the property without you knowing then this notice will tell any buyer that you have an interest in the property. This will also stop your partner re-mortgaging the property without you knowing.

This will protect your interest until your solicitor is able to apply to the court for a judge to decide whether you should stay in the property or not.

The judge has the power to transfer the property to you even if it is not in your name.

The judge can also decide whether the property should be sold and whether you should receive money from the sale.

If the property is rented the judge can still decide to transfer the property to you, the council will have to put your name on the rent book.

My partner has changed the locks to our home and won't let me back in.

12. What can I do?

If you own the property jointly with your partner then you are allowed to return to it.

Your partner should either supply you with new keys or put the old locks back. You may need to get a solicitor to write a letter to your partner.

If this does not work then you may need to apply to the court for an order that your partner must let you back in.

If you have been violent to your partner the court may not let you back in to the property for the time being.

I left the house and my children. Does this mean I do not have any rights?

No.

Joint ownership of the property will not change unless your partner obtains a court order or you agree to transfer your share of the property to your partner or the house is sold.

You are still liable to pay the mortgage as is your partner. You should try to agree to divide the payments.

If you leave your children behind, but you want them to live with you, you can apply for a "Residence Order".

However, the longer they remain living with your partner the more difficult it may be to convince the court to change the arrangements.

You can apply instead to see the children regularly, this is known as "Contact".

How can I get my partner to help me pay the bills?

If you need urgent help to pay the bills you can apply to the judge for urgent

maintenance, this is called "Interim Maintenance". Your solicitor will be able to tell you more about this.

You may get weekly or monthly payments from your partner or the court may tell your partner that they should pay the mortgage or rent instead of you.

You can apply for maintenance even if you are still living together and are still married.

Who pays maintenance for the children?

If the children are living with you then your partner should pay to help you look after them.

If your partner is not paying any money for the children then you can apply to the CSA [Child Support Agency]. They are the government agency responsible for collecting money for you from your partner, to help you look after your children.

How does the court decide how much money I should get or what I should pay my partner?

This is a difficult job for a judge, because they have to be fair to both you and your partner.

Before the judge can make a decision he or she must have all the information about your income, expenses, property that you own, savings, insurance policies, pensions and shares etc. Your partner also has to give the same information to the court.

Your solicitor will therefore need to collect all this information from you.

After you separate you should keep copies of all your bank statements, wageslips, bills and anything you have had to pay out. This will help your solicitor prepare the information for the judge.

The judge has to look at what both you and your partner need and what you can both afford. He also needs to consider whether you or your partner are looking after the children as whoever is may need more money. The judge has to consider other things such as the length of the marriage, your ages and your ability to work and earn money etc.

Do I legally have to tell anyone that my partner and I have separated / divorced?

You should tell the Inland Revenue as your separation may effect your tax position.

If you receive benefits you should also tell the DSS as you may be entitled to some additional help.

We are not married. Do I have any rights?

Even if you are not married, but you have children you can still apply for maintenance for your children through the Child Support Agency.

If you own a property together and you want to sell but your partner does not, you can apply to the court and ask them to decide. The court can also decide if one of you should stay in the property.

If only your partner owns the property you may still be able to show you have a share in the property. For example, if you have paid for improvements to the property or helped to pay the mortgage, you may be entitled to claim a share in the property. Or if it was always intended that you should have a share in the property.

If you cannot show that you have a share in the property, but you have children together, you may be able to make a claim for a share of the property on the children's behalf. This can be done under the Children's Act, your solicitor will be able to tell you more.