

Step 4 – Applying for Decree Nisi

The Petitioner has to fill in and sign an application form (D89) and a Statement in Support of Divorce.

There are 5 different types of statement numbered D80A to E depending on what your petition was based on. E.g. adultery would be D80A, unreasonable behaviour D80B, etc. See the justice.gov website for more information. The layout is based on questions that the petitioner has to answer. Usually the signed Acknowledgement form is attached as an exhibit. This proves that the Respondent has received the papers.

You/your solicitor then need to lodge at court:

- (1) The original signed statement attaching the Acknowledgement
- (2) The signed application form

Step 5 - Decree Nisi granted

If the District Judge is satisfied with the papers received, he will issue a Certificate of Satisfaction regarding the arrangements for the children (if any) and a Certificate of Entitlement to a decree setting out the date/time when decree nisi will be pronounced at court. It will also confirm whether a costs order is likely to be made.

It is not usually necessary for either party to attend court unless for instance they want to oppose the divorce (which is rare) or dispute the Petitioner being able to get a costs order against the Respondent.

On the appointed day, unless either party raises an objection, the District Judge will pronounce decree nisi. The court office will send sealed copies to you/your solicitor and the Respondent.

Step 7 - Applying for Decree Absolute

Six weeks and one day after the date of decree nisi, you/your solicitor can apply to the court for decree absolute by completing and sending in a signed application form D36. If the divorce was issued on or after 1.7.2013 no fee is payable. If earlier you need to pay £45 or apply for fee exemption by submitting an EX160 (see step 1 for more info).

NB: If there are financial/property matters to resolve, make sure you have legal aid advice before applying for decree absolute.

If you do not apply for the absolute within three months from the date you can first do so, the Respondent can apply instead.

Step 8- Decree absolute is granted

Once the court receives the application, it is usually processed quickly with sealed copies of the decree absolute being sent out within a few working days. This is the final divorce document confirming your marriage is dissolved. You are at that stage divorced and free to remarry (if you wish!)

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**PLEASE KEEP THE DECREE ABSOLUTE SAFE FOR FUTURE REFERENCE**

ACORN  
FAMILY LAW LLP

# How to Divorce



- a step by step guide -

(July 2013 version)

**This leaflet is intended to provide information about the divorce process only, and does not include other matters you may need to resolve such as child arrangements or a financial settlement.**

### **Basic Points to start a divorce**

In order to get a divorce in England/Wales you must:

- ü Have entered into a legally binding marriage spouse. If you married abroad and the marriage follows the law of that country then the English courts should recognise it as valid.
- ü have been married for at least **a year**;
- ü be domiciled in England/Wales or have been habitually resident here for at least one year (you may need specialist advice if you are not sure about domicile/habitual residence)., and
- ü be able to prove that your marriage has irretrievably broken down (this is the only ground for divorce).

### **Proving irretrievable breakdown**

You have to show that one of the following five facts apply, either:

- (1) your spouse has committed adultery and you can no longer tolerate living with him/her. You do not have to name the third party concerned; (**adultery**)
- (2) your spouse has behaved in such a way that you cannot reasonably be expected to live with him/her; (**unreasonable behaviour**)
- (3) your spouse has deserted you for a continuous period of at least two years (**desertion** – rarely used and best avoided)
- (4) you and your spouse have lived apart for a continuous period of at least two years, and your spouse consents to the divorce (**2 years separation with consent**), or
- (5) you and your spouse have lived apart for a continuous period of at least five years. Your spouse does not have to consent to the divorce in this case (**5 years separation**).

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Step 1 – Issuing the divorce

You/your solicitor will need to prepare a Divorce Petition (D8 form) based on one of the 5 facts referred to above. If there are children, a form about the arrangements for them is needed (D8A). You can get these forms from the county court office or download them from <http://hmctsformfinder.justice.gov.uk>. Where a solicitor is instructed it is usual for the draft divorce papers to be sent to the Respondent for approval first (this helps ensure the matter goes through smoothly).

When the papers are ready, the following need to be lodged at the local County Court:

- v the original and one complete copy of the **divorce petition** (a third copy is required if you are naming the Co-Respondent in an adultery case).
- v your original **marriage certificate**, or a certified copy. NB: photocopies are not acceptable. A certified copy can be obtained from the church or Registry Office were you married. If the certificate is not in English you will also need a formal translated copy.
- v Payment of the **fee** (currently £410) or an **EX160** fee exemption form if you are on benefits or low income plus original supporting documents such as wage slips. See court leaflet EX160A for more details of the rules about fee exemption.
- v if you have children, the **statement of arrangements** form, together with a copy for your spouse. (It is best for both you and your spouse to complete this document if possible.)

Step 2 – Serving the Papers

Once the court has processed the papers you have lodged, it will arrange to serve your spouse by post with the following:

- A copy of the divorce petition
- A copy of the statement of arrangements for children (if applicable)
- An Acknowledgement of Service form
- Notice of Proceedings and explanatory notes.

If the Respondent does not reply to the divorce (see Step 3) you still need to show that he/she has been served with the papers before you can proceed. You may need to consider personal service by process server or court bailiff; or apply to have service “dispensed with’ or ‘deemed’. These options will attract further fees and you should get legal advice before proceeding.

Step 3 – Acknowledging the Papers

Your spouse (the Respondent) has 8 days from receipt of the papers to return the completed Acknowledgement of Service form to the court. He/she can indicate on the form if they intend to defend the divorce (in which case they have to file an Answer), although this is rare.

The Respondent may need legal advice before returning the Acknowledgement, particularly if the Petitioner has applied for costs in the Petition, and/or if they are unhappy about what is being said in the divorce papers.

Once the court has received the Acknowledgement of Service, it will send a copy to you/your solicitor. Assuming the divorce is not to be defended, you can proceed to step 4.