

PENGILLYS

SOLICITORS • MEDIATORS

Divorce and Separation

Guiding you through change
with care and support



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Your guide to Divorce and Separation

This brochure is prepared whilst the Government is currently undertaking a consultation review where it is confidently expected that the grounds for divorce and the procedure will change.

Family and relationship breakdowns are inevitably stressful and upsetting. Our dedicated Family Team will support you through the process and we have considerable expertise to assist in connection with all aspects.

Divorce

This is the process of ending a marriage, which is predominantly administrative.

The following considerations currently apply:-

- To start divorce proceedings you must have been married for at least one year
- The only ground for divorce is irretrievable breakdown of the marriage evidenced by at least one of the following factors. The same factors apply for separation. The same factors (with the exclusion of (a)) apply to civil partnerships.

The five factors are:-

- (a) adultery
 - (b) unreasonable behaviour
 - (c) desertion (for a period of two years)
 - (d) two years' separation with consent
 - (e) five years' separation without consent
- The process requires the issue of a Petition, an Acknowledgement of Service from the other party and then a two stage request to the Court for the preliminary Decree (**Decree Nisi**) and the final Decree (**Decree Absolute**).

Dissolution of a Civil Partnership

A similar approach occurs, but different phraseology for the Orders.

Nullity

This enables a party to apply if the marriage was invalid and not legally binding.

There are two considerations:-

- (a) whether the marriage was void and therefore invalid. There are a number of reasons for this, for example one party already being married; or
- (b) the marriage is voidable and the Court will need to be convinced that the marriage should be annulled. A frequent example is the failure to consummate.

Judicial Separation

This is an alternative to divorce, although the process is the same but the parties remain married.

Cohabitees

Unmarried couples do not acquire any legal rights as a result of their relationship. There is a common misconception about common law marriage, (which does not exist). The rights of cohabitees require specific reference to particular circumstances for any legal remedy.

That can include:-

- Trusts of Land and Appointment of Trustees Act 1996 to deal with property
- Married Women's Property Act 1882 if the parties were "engaged" giving the Court power to deal with property
- Family Law Act 1996 which allows people to occupy property
- Children Act 1989 which provides the ability to seek financial Orders for the benefit of children.

We hope that this short guide has helped you. We would be pleased to meet with you to discuss any questions that you may have.

Please call us on 01305 768888

We will then put you in touch with a member of our experienced Family team.

Please visit www.pengillys.co.uk where full details of our Family team are available.

For further details about Pengillys and how we work, please refer to our Terms of Business and Privacy Policy which are available on our website or on request as printed documents.

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We can also advise on:

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