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Divorce: Common family law questions

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Can I get divorced in Guernsey?

The answer is yes, as long as either party to the marriage is either permanently resident in the Bailiwick of Guernsey or has lived in the Bailiwick for at least one year ending with the date the petition is lodged at Court.

If either of these conditions is satisfied, then a petition can be issued in the Royal Court, even if you were married elsewhere.

Can I get divorced now or do I have to wait?

Unlike England, there is no rule preventing a divorce petition being issued in the first year of marriage. In theory you could commence divorce proceedings the day after you got married, but that would require very strong grounds.

Of course, you need grounds to issue a divorce petition, see Grounds for divorce. In short, unless you have lived apart for at least two years then a divorce petition can only be issued on the grounds of the other party's adultery or unreasonable behaviour.

Can I have a 'quickie' divorce?

All divorces are 'quickie' divorces, unless they are defended. For an outline of the procedure see Flow chart of an undefended divorce and Divorce - the basics.

Will I get a costs order in the divorce?

Possible, but unlikely. Costs orders in Guernsey divorce proceedings are relatively rare. Costs orders are never automatic and are always a matter for the discretion of the judge. In practice, costs orders are usually reserved for a case where one party has issued or pursued an application unreasonably, maliciously or in bad faith.

Can we get divorced just because of irreconcilable differences?

No, irreconcilable differences is not in itself a ground for divorce.

The only ground for divorce is irretrievable breakdown of marriage which has to be proved by one of the five facts, namely adultery, unreasonable behaviour, desertion, two years' separation with consent or five years' living apart, see Grounds for divorce.

Is it still adultery even if we have already separated?

Yes, sexual intercourse with someone who is not your spouse is adultery, even if you are already separated.

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What if my spouse will not admit adultery?

This question arises on a fairly regular basis. In practice, people looking for a quick and relatively easy way to divorce often choose adultery in preference to a petition based on unreasonable behaviour. In such circumstances, there is every incentive for the respondent to admit adultery.

In the event that adultery is not admitted, then it is for the petitioner to prove. The simple approach would be to list the matter for trial and ask the respondent on oath about the alleged relationship. The downside of this approach is that it is rather expensive, as it involves listing the case for trial.

As an alternative, it may be possible to adduce evidence from a private detective as to the nature of the relationship. Care however should be taken in instructing private detectives who can often prove expensive.

When can I start a new relationship?

The short answer is that if you are not divorced and have not finalised your financial settlement, then commencing another relationship can have the following consequences:

If you are not divorced, you run the risk of your spouse issuing a divorce petition on the grounds of your adultery. If the marriage is already over, this may not be a problem.

If you have yet to conclude a financial settlement, then you remarry or cohabit, or intend to cohabit, you may find that your spouse seeks disclosure from the third party as to his income and capital. Further, the Court could take into account the financial resources of the new partner in any financial settlement.

Can I revert to my maiden name now I am divorced?

You can revert to your maiden name or choose another surname at any time, provided this is not done so for the purpose of criminal activity.

Upon divorce, your surname does not change automatically. This will need to be done by a formal deed poll, see Change of Name.

What if I do not know where my spouse is living?

The short answer to this is that you will need to find them. To obtain a divorce, you will need to prove to the satisfaction of the Court that the respondent has received the petition.

In exceptional circumstances, if you have taken all reasonable steps to trace your spouse, the Court can make an order for what is called substituted service. This is where details of the petition are published in a newspaper local to the last known address of the respondent.

On occasion, the Court may allow service by email or Facebook if the judge is satisfied that this method may bring the contents of the petition to the attention of the respondent.

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