FAMILY LEGAL INFORMATION

A guide to all family related legal matters

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A guide to help you

The family team at Dunn & Baker Solicitors are committed to providing expert advice that is practical and relevant to your particular circumstances. It is impossible to cover all situations in a leaflet such as this but it is designed to provide a brief summary of the key areas that our clients experience during the breakdown or indeed at the outset of their relationships.

Our specialist legal experts will provide tailored and plain speaking advice whenever required to assist you in making informed and well-reasoned decisions for you and your family.

Contents

Divorce

How do I start divorce proceedings?

You can apply for a divorce if you have been married for over a year and either yourself or your spouse are domiciled here or have been resident in England or Wales during the preceding year. You can apply for a divorce even if the wedding was conducted in a foreign country.

On what basis can a divorce be started?

The only ground for divorce is that your marriage has irretrievably broken down. Proving whether a marriage has irretrievably broken down is established by proving one of the following 5 facts:

1 Adultery

This means your spouse has had sex with a person of the opposite gender during your marriage (even after separation) and as a result you find it intolerable to live with them.

2 Unreasonable Behaviour

This is the most common reason used in divorce petitions. You must establish that your spouse's behaviour is so unreasonable that you should not be expected to continue living with them. Common examples include: lack of emotional support, poor communication, showing no interest in you, wasting money, and violent behaviour.

3 Desertion

This is where your spouse has left you for at least 2 years and you did not agree to a separation.

4 Two years' separation

This is where you have been living apart for 2 years and you both agree to getting a divorce. You can still rely upon this fact when you are living under the same roof but in separate households.

5 Five years' separation

This is where you have been living apart for 5 years. You can rely on this fact even if your partner does not agree to the divorce.

How long does it take to conclude divorce proceedings?

If all parties co-operate and act amicably, a typical divorce can take between 6-9 months from start to finish. Divorce proceedings can take significantly longer if the parties do not co-operate or there are disputes regarding children and/or finances.

How much will a divorce cost?

We offer a fixed fee for the divorce itself, whether you are taking or receiving the proceedings. When a divorce petition is sent to the court a court fee will need to be paid. The person starting the proceedings can apply for a free or reduced court fee which is subject to your financial circumstances.

Dissolution of civil partnership or same sex marriage

Anyone who has been part of a civil partnership for a minimum of 1 year can apply for a dissolution provided one of the parties is domiciled or has been resident in England or Wales for the last 12 months.

On what basis can a dissolution be started?

The only ground for dissolution is that the civil partnership has irretrievably broken down. Proving whether a civil partnership has irretrievably broken down is established by proving one of the following 4 facts:

1 Unreasonable Behaviour

You must show that your partner's behaviour is so unreasonable that you should not be expected to continue living with them. Common examples include: lack of emotional support, poor communication, showing no interest in you, wasting money, violent behaviour, or an affair.

2 Desertion

This is where your partner has left you for at least 2 years and you did not agree to a separation.

3 Two years' separation

This is where you have been living apart for at least 2 years and you both agree to the dissolution of the civil partnership. You can still apply when you are living under the same roof but in separate households.

4 Five years' separation

This is where you have been living apart for 5 years. You can rely on this fact even if your partner does not agree to the dissolution of the civil partnership.

How long does it take to conclude dissolution proceedings?

If all parties co-operate and act amicably, a typical dissolution can take between 6-9 months from start to finish. Proceedings can take significantly longer if the parties do not co-operate or there are disputes regarding children and/or finances.

How much will a dissolution of a civil partnership cost?

We offer a fixed fee for the dissolution itself, whether you are taking or receiving the proceedings. When a dissolution petition is sent to the court a court fee will need to be paid. The person starting the proceedings can apply for a free or reduced court fee and this is subject to your financial circumstances.

Consent orders

A consent order is a document that sets out the agreement that the parties to a divorce or dissolution have reached regarding a division of the assets of the marriage or civil partnership. If the terms of the consent order are agreed, the parties sign the document and submit it to the Court as evidence of their agreement.

What is the effect of a consent order?

Once a consent order is approved by the Court, a line will be drawn under the parties' finances. In most cases the order will provide that neither party can return to the Court for any further negotiations on the financial aspects of the divorce or dissolution.

What happens if I or my former partner or spouse does not agree to a consent order?

Until all financial claims have been dismissed by the Court, there exists the unhappy possibility that your former spouse or partner could make an application at a future date for a financial settlement against you. The chances of this step being taken are likely to increase if either of your financial situations improve or deteriorate. We always recommend that you try to agree a financial solution and underpin this through the making of an order of the court. If this is not achievable, we will similarly recommend that you consider asking the court to decide your financial settlement within a court application and proceedings. In this way you will achieve finality and future clarity.

Mediation

Mediation is a process which exists to help couples, married or unmarried, or indeed any family member reach decisions and settle disputes arising from the breakdown of a relationship. Mediation can assist with finding solutions relating to all aspects that arise from relationship difficulties such as child arrangements, financial and property issues.

The process is not designed to achieve a reconciliation but rather to explore how best to move apart. Mediators are all expertly trained and qualified. They usually have a solid experience of a whole range of family problems.

The philosophy behind mediation is that it is better to try and agree matters before the positions of the participants become fixed and attitudes harden. Mediation can often be a less financially and emotionally expensive approach.

It remains possible to access legal aid to participate in mediation, subject to financial eligibility. It is necessary, except in exceptional cases, that mediation is considered and preferably attempted before any application is made to the court to help resolve any impasse surrounding child arrangements or financial issues. If you are interested in this process we have mediators in our family team who can discuss further with you how it would work in practice.

Financial proceedings

If it is not possible to reach an agreement regarding the financial aspects of your divorce or dissolution and mediation does not achieve a settlement, you can apply to the court for a financial remedy order. This can include, amongst other things, an application for a lump sum, a property to be transferred or sold, periodical payments (maintenance) or a share of your spouse's or partner's pension.

It is necessary, within the financial remedy process, to set out a complete and transparent financial summary of your position. This is achieved through completing a standard court form called a 'Form E Financial Statement' and this requires you to attach documentation to support the figures and information provided. It is crucial you give a full and honest account of your financial position to avoid the risk of any final order being set aside on the ground of deception.

We are unable to assist you in hiding assets or income and cannot mislead the court. If we are asked to do so, we will be unable to act for you going forward. Furthermore, you are not permitted to take, copy or divert documents (paper or electronic) that belong to your partner or spouse. We are similarly prohibited from handling such documents and if they come into our possession we must immediately provide them to your former partner or their legal representative.

When the court considers your financial application, the Judge has wide discretion under the law and applies what is called the section 25 factors

These factors consider:

1. The needs and welfare of any child;
2. The income and earning capacity of you both;
3. Property and other resources available to you;
4. Your respective needs, obligations and responsibilities;
5. Your pre-separation standard of living, to a limited degree;
6. Your ages and the duration of your marriage;
7. The health of each of you;
8. Your past, present and future contributions to the welfare of your family;
9. The conduct of you both, but only if it is highly exceptional;
10. The loss of pension rights and other future benefits by reason of the breakdown of the relationship.

Ultimately, in applying the relevant factors the court must achieve fairness and, as a starting point, meet the needs of any children as a first consideration and thereafter their parents.

You lose an element of control when leaving the decision to the court and it is for this reason that there is often an appetite to explore a settlement to help remove or reduce the financial and emotional cost that inevitably accompany court proceedings.

Joint ownership of property

If you own a property or land, there are two ways you can do so:

Tenants in Common: This means that each owner has a separate and distinct share and that upon the death of one person, their share will pass in accordance with that person's Will or the rules of intestacy. You can share the property as tenants in common in unequal shares if this is what has been agreed.

Joint Tenants: When you hold a property as joint tenants this means that the share of the deceased will automatically pass to the surviving owner on the death of the other party.

Can I change from joint tenants to tenants in common?

Yes, you can unilaterally serve a notice on the other owner(s) at any time saying that you want to change your share into a tenancy in common to avoid your share from passing to the other owner(s) automatically upon your death. This is called severing the joint tenancy.

We are unable to advise you whether this is the preferred and sensible step to take in your circumstances. It is a choice that you must make due to the element of speculation involved. If you sever the joint tenancy and your co-owner dies, you may have deprived yourself of receiving their share.

Living together agreements

What is a living together agreement?

Couples who live together but who are not married or in a civil partnership have fewer legal rights and remedies available compared to people who are married or in a civil partnership. In order to compensate for this imbalance and help remove the uncertainty upon separation, couples can enter into a living together agreement to set out their wishes as to how they would like their assets to be divided in the unfortunate event of a separation or the death of their partner.

What does a living together agreement cover?

A living together agreement usually sets out the following areas:

- ownership of property at the time of the agreement and in what proportions;
- the financial arrangements you have decided to make while you are living together; and
- how property, assets and income should be divided in the event you separate or upon your death.

When should I make a living together agreement?

Couples can make a living together agreement at any time, whether they are about to start living together or if they have been doing so for many years. We can assist in the negotiation and preparation of the terms of such an agreement. An agreement can assist in reducing the financial and emotional cost that can often accompany a separation. The agreement can also be very helpful evidentially in any court proceedings relating to your relationship and any property issue.

Pre-marital agreements

It is increasingly common to enter into a pre-marital agreement or "pre-nup" to help evidence the financial position of the parties to an intended marriage or civil partnership. The agreements are not strictly enforceable under the laws of England and Wales but they have an evidential value to the parties themselves and also to the court in the event of a separation, divorce or dissolution.

There is guidance which must be followed in the preparation and completion of a pre-marital agreement to help maximise the chances of the document being implemented and carrying significant weight upon a breakdown of the relationship which includes:

a. the need for financial disclosure to ensure you enter the agreement with your eyes wide open and with a full understanding of the relevant circumstances;

b. the need to take independent legal advice upon the terms of the agreement;

c. the agreement being completed and signed no less than 21 clear days of the marriage or civil ceremony.

In shorter relationships, it is more likely the terms of the agreement will carry more weight to the court under the existing matrimonial law.

Wills

A Will is a formal document that sets out how your property is distributed after your death. A Will can also be used to appoint a guardian to look after your child or children after your death. By making a Will you can ensure that your estate passes to the correct person or persons on your death.

What happens if I do not make a Will?

If you do not make a Will, your property will pass under the rules of intestacy. If you are living with a partner and that partner dies, you have no automatic right to make a claim against his or her estate under the rules of intestacy. Unless there is a valid Will, you would have to make a legal claim against the deceased's estate.

What happens to my Will if I get divorced?

Any decree of divorce will automatically remove your former spouse from your Will as an executor or beneficiary.

Although a divorce does not invalidate a Will, it is a good idea to review your Will to ensure your estate is distributed in accordance to your wishes. If you would like to discuss making a Will or would like further information, please contact our Wills and Probate team.

I already have a Will with my partner and we are now getting married. Do I need to make another Will?

Unless your Will was made in contemplation of your marriage, it will be necessary to review your Will as your marriage will affect elements of your Will.

Parental responsibility

What is parental responsibility?

Parental responsibility means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and their property.

People who have parental responsibility are entitled to make important decisions about the child, such as the name of the child, where the child goes to school and where they should live.

Parental responsibility lasts until the child reaches 18 years of age or marries (between the ages of 16 and 18 years of age).

Who can claim parental responsibility?

Married Couples – If the father is married to the mother at the time of the child's birth, or subsequently marries her, then parental responsibility is conferred upon him automatically by operation of law. A mother always has parental responsibility immediately at the child's birth.

Unmarried Parents – If the parents of the child are not married, then parental responsibility is automatically conferred on the mother.

An unmarried father can obtain parental responsibility by:

a. marrying the mother;

b. entering into a parental responsibility agreement with the mother which is then registered;

c. applying to the court for an order to acquire parental responsibility;

d. the child being born after the 1st December 2003 and the father is named, or later becomes named as father on the child's birth certificate; or

e. obtaining from the court a child arrangement specifying the child lives with the father.

Step-parents - A person who is married to a parent of a child can enter into an agreement which will grant them parental responsibility for the child. This requires the consent of all parents or other adults who already have parental responsibility for the child.

Non-parents – Non-parents may obtain parental responsibility for a child by order of the court, by appointment in writing or in a Will made by a person with parental responsibility or guardian. A person with a residence order will also automatically have parental responsibility.

Local Authority – If a local authority obtains a care order in relation to the child, the local authority will acquire parental responsibility for the child and share it with any parent that has parental responsibility.

Child arrangements orders

What is a child arrangements order?

A child arrangements order is an order of the court that regulates arrangements for a given child or children and encompasses:

- with whom the child is to live, spend time or otherwise have contact; and
- when the child is to live, spend time or otherwise have contact with any person.

What is meant by 'contact'?

Contact simply means the time that a child spends with an adult. There are several ways that contact may take place:

- direct contact between the child and the person named in the order;
- overnight staying contact;
- telephone/video call contact;
- supervised contact or supported contact; and
- indirect contact through letters or cards.

In rare circumstances, where the best interests of the child dictate, the court can order that there is no contact. The legal presumption is that a child should spend time with both parents unless there are welfare reasons that exist to make it unsafe to occur. A child's welfare will always be the paramount consideration for any court.

Who can apply for a child arrangements order?

A child's parent can always apply for a child arrangements order, as can a child's step-parent, guardian, or anyone with whom the child has been living for at least three out of the last five years (and to include the last three months). Other people, such as grandparents, may apply for a child arrangements order for a child if they obtain permission from the court.

How can you apply for a child arrangements order?

Before a person can apply to the court for a child arrangements order, the parties are required to consider mediation as a method of dispute resolution in the hope that court proceedings can be avoided. We can assist you in making a referral for mediation.

How long does a child arrangements order last?

A child arrangements order, that regulates with whom the child is to live and when, will last until the child is 18 years of age (unless the court orders an earlier date). An order that regulates the time that someone spends with a child will last until the child is 16 years of age, unless there are exceptional circumstances. Any application made to the court for a child arrangements order must be made before the child reaches the age of 16 years, unless there are exceptional circumstances.

Child abduction

What can you do if you have concerns about your child being abducted?

If you have fears that your child has been abducted, or may imminently be abducted, you must inform the police. Furthermore, an excellent source of immediate help is the organisation **REUNITE** which offers an emergency advice line. The telephone number is **+44(0)116 2556234**.

Can you legally take your child out of England and Wales?

In certain circumstances, a child may be legally taken out of England and Wales for a limited period of time without first having to obtain the consent of the other parent or any other person with parental responsibility. This is usually where you have a residence order or a child arrangements order that states that the child lives with you and you plan to take a child out of the jurisdiction of England and Wales for less than 1 month.

Can you apply to the Court to prevent your partner taking your child abroad?

If you have concerns that your partner may be planning to abduct your child, you can apply to the Court for a prohibited steps order. We have reciprocal enforcement arrangements and legal systems in which other countries collaborate to assist in the process of whether it is appropriate for the child to return to a particular jurisdiction.

Change of name deeds

You can change your name at anytime when you are an adult. It is usually necessary to prepare a Change of name deed to evidence your new name for government agencies, banks and professional services.

We only prepare Change of name deeds for existing clients of our firm unless there are exceptional circumstances.

It is possible to change a child's surname in the same way provided all persons having parental responsibility consent to the application, preferably in writing. If consent is not provided, it is possible to make an application to the court for an order granting a change of the child's name. This is known as a 'specific issue order'.

A Dunn & Baker Solicitors Guide

Here for you

Family legal matters can be daunting. With the best solutions on offer for your individual circumstances right on your doorstep, why go anywhere else?

We have offices in Exeter, Cullompton and Newton Abbot. Please contact one of our legal experts:

Exeter
21 Southernhay East
Exeter, Devon
EX1 1QQ
☎ **01392 285000**

Cullompton
38 High Street,
Cullompton, Devon
EX15 1AE
☎ **01884 33818**

Newton Abbot
66 Queen Street,
Newton Abbot, Devon
TQ12 2ER
☎ **01626 330127**

We also offer specialist advice and assistance in the following areas of law:

- Residential Property
- Commercial Property
- Company Law
- Personal Injury Claims
- Medical Negligence Claims
- Debt Collection
- General Litigation and Disputes
- Wills, Trusts and Probate
- Divorce and Separation
- Legal Aid
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