

GETTING A DIVORCE IN THE CAYMAN ISLANDS

Family breakdown can be one of the traumatic events in a person's life. Significant emotional issues can arise, as well as legal and financial implications. These implications can range from division of marital assets, maintenance for spouses and children as well as custody and contact with children.

Divorce in the Cayman Islands is governed by the Matrimonial Causes Law (2005 Revision). A person is entitled to get a divorce if he or she has been domiciled here for 1 year prior to issuing proceedings seeking a divorce¹. A wife may also apply for a divorce if she has been ordinarily resident here for 2 years prior to petitioning the court.

In order to be granted a divorce in the Cayman Islands you must prove that you have grounds for divorce under the law. The grounds for divorce are:

1. Your spouse has committed adultery and you find it intolerable to continue to live with him or her;
2. Your spouse has behaved in such a way that you cannot reasonably be expected to live with him or her;
3. Your spouse has deserted you for a continuous period of 2 years before you issue proceedings;
4. You and your spouse have lived apart for at least 2 years before you issue proceedings, and your spouse consents to the divorce;
5. You and your spouse have continuously lived apart for 5 years before the issuing of the proceedings.

The legal document that starts divorce proceedings is called a petition. In a petition you must set out the grounds for your divorce. You must also swear an affidavit that says that the petition is true and accurate.

¹Domicile means that a person has a fixed intention to remain in a country.

The petition is then filed in the court office and served on your spouse. Your spouse has 14 days to respond and indicate whether they intend to contest the divorce grounds.

If your spouse does not defend the divorce then the court will approve the petition. If your spouse does wish to defend the divorce the case will be listed before a judge, who will decide whether there are proper grounds for divorce.

When divorcing spouses often have to consider a range of issues. These issues can include:

1. Where the children live;
2. How much time they will spend with each parent;
3. How marital assets will be divided (may for instance include property, shares, trusts, pensions);
4. Payment of maintenance for the children or the spouse.

There are a number of ways in which these issues can be resolved. Ideally, spouses will be able to agree these matters between them. This is often in the best interests of children and the parties. If difficulty arises in communication then the parties can refer matters to a qualified mediator who can assist them in reaching an agreement. Court rules mandate that parties attend an information session on mediation, which will outline the scope of that process. If the issues can be agreed then the parties can place the agreement before a judge, who will sign a consent order.

If parties cannot agree issues then they will have to be decided by a judge after hearing evidence. In these circumstances the spouses will have to set out their positions in affidavits and disclose all financial information. In the event that the issues being litigated involve children the court will usually appoint a social worker to assess the family and file a report.

Once all financial matters and issues and relating to the children are resolved a decree of divorce will be granted.

The questions around marital breakdown are often complex, with significant consequences for the parties and their children. In these circumstances it is advisable to seek the assistance of a professional who can give legal advice and assist in the decision making process. Broadhurst LLC has a wide range of experience in giving objective, practical legal advice in family law matters. By giving this support we hope to guide you through the process and bring about a successful resolution.

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