



+44 (0)1534 875875

Family Law:

Divorce

At Benest & Syvret we approach Family Law disputes in a constructive way designed to preserve people's dignity and encourage agreements between separating parties.

Our Approach

Above all we adopt the Code of Practice of "Resolution" (formerly the "Solicitors Family Law Association" which requires us to:

- Conduct matters in a constructive and non-confrontational way.
- Avoid use of inflammatory language, both written and spoken.
- Retain professional objectivity and respect for everyone involved.
- Take into account the long term consequences of actions and communications as well as the short term implications.
- Encourage clients to put the best interests of the children first.
- Emphasise to clients the importance of behaving in a civilised way.
- Keep financial and children issues separate.
- Ensure that consideration is given to balancing the benefits of any steps against the likely costs – financial or emotional.

- Inform clients of the options e.g. counselling, family therapy, round table negotiations, mediation, collaborative law and court proceedings.

If a relationship is breaking down your first port of call need not necessarily be your lawyer's office. There are many organisations such as Relate who could help you resolve difficulties with the assistance of a trained counsellor. We are happy to provide referrals to such organisations.

Divorce Petition

The divorce law in Jersey requires that you must have been married for at least three years before a divorce petition can be instituted, unless significant hardship would arise from a divorce being delayed. To obtain a divorce you must show that the marriage has broken down because:

- Your spouse has committed adultery and you find it intolerable to live together.
- Your spouse has behaved in such a way that you cannot reasonably be expected to live together.
- You have been separated for one year and your spouse agrees to a divorce.
- You have been separated for two years.
- That your spouse deserted you more than two years ago.

The reason for the breakdown of the marriage needs to be set out in the divorce petition. In the case of an allegation of adultery you will usually be required to name the other person as a co-respondent in the proceedings. If you allege that your spouse's behaviour has been unreasonable you will need to set out some limited examples of that behaviour and how it has affected you.

Decree Nisi

Following the issuing of a divorce petition if the proceedings are not defended by your spouse a **Decree Nisi** will be issued. Decree Nisi is the Order issued by the Court confirming that it has found that the grounds for divorce are established. After a minimum period of six

weeks this **Decree Nisi** can be converted into a Decree Absolute. The Decree Absolute marks the end of the marriage and replaces for all purposes your marriage certificate. In the normal course a Decree Absolute should not be issued until all the financial arrangements and arrangements for the children have been resolved between the parties.

If there are children of the marriage a detailed statement of arrangements that you propose for them after the divorce will need to be filed with the divorce petition. The Court has the power within the divorce proceedings to make various Orders for the children's wellbeing including the payment of maintenance, contact (previously known as access) and their residence.

Ancillary Relief

The process of divorce, so far as a lawyer is concerned, is the process by which you become unmarried. The settlement of matters relating to the children and financial matters, that is to say the family home, maintenance, pensions, savings and investments is known as **Ancillary Relief**.

Divorce Procedure

Divorce is the procedure by which you allege the separation or some misconduct on the part of your spouse as a result of which you wish to become unmarried. If those grounds are proved to the satisfaction of the Court a Decree Nisi will be issued. Separate issues relating to the care of the children and financial arrangements are dealt with by the Court after divorce proceedings have been issued. In practice the divorce proceedings themselves are relatively straightforward and can be dealt with fairly swiftly. It is the resolution of financial matters which takes time. To assist our clients here a number of frequently asked questions to which we provide answer below:

- i. **When can a divorce petition be issued?** In order to issue a divorce petition you will need to show that you went through a valid ceremony of marriage and have been married for a period of at least three years. The Court can grant leave to issue a divorce petition within a shorter period if exceptional hardship would arise by the marriage being required to continue. In order to issue a divorce petition in Jersey you will need to show that you were domiciled and/or resident in the Island for a period prior to the issuing of a petition. Specific advice should be sought in this area.
- ii. Will my marriage certificate be required?

In order to file a divorce petition with the Royal Court we need to submit your original marriage certificate or an official copy thereof. If you cannot locate your marriage certificate we shall be able to obtain a copy from the relevant registrar if the marriage was in Jersey or make enquiries on your behalf if the marriage was in another jurisdiction. The marriage certificate will be retained by the Court once the divorce proceedings are concluded.

iii. ***Does my spouse have to agree to a divorce?*** No. It may however be useful for you to agree the grounds of a divorce with your spouse so as to ensure that the facts set out in the petition are not opposed or cause any unnecessary aggravation.

iv. What information has to be put in the divorce petition? The divorce law, known as the Matrimonial Causes (Jersey) Law 1949 sets out the standard information that is required in a divorce petition. The names and addresses of the couple concerned, details of any children and the grounds for the divorce are basic requirements. Details are also required of your employment and that of your spouse, together with a general statement of your respective income and assets. At the end of the petition is a prayer setting out what you are asking the Court to do. This will start with a request that the marriage be dissolved and thereafter a list of requests in relation to financial matters known as ancillary relief.

v. ***What details in relation to the children are required to be provided on divorce?*** The Matrimonial Causes Law again requires that a statement of arrangements in relation to the children is filed with the Court at the same time as any divorce petition. This allows the Court to assess the circumstances of the children so as to ensure that immediate appropriate arrangements are made. Details as to the children's education, care and welfare will be required to complete that form.

vi. ***Will I need to attend Court?*** It is rare for a spouse to be required to attend Court in relation to divorce proceedings. If however financial matters cannot be resolved between the parties an application to Court may result in a hearing at which evidence must be heard from both parties and in certain cases their accountants or other members of their family.

vii. ***Are divorce proceedings held in public?*** The majority of family law proceedings are held in private. The Jersey Evening Post no longer publishes the divorce list and as a consequence it is unlikely that any divorce proceedings will receive media attention.

viii. ***How long will it take to resolve financial matters?*** As the financial circumstances of every couple is entirely different it is impossible to predict how long it will take to resolve financial matters. Negotiations can take place at any time either before or after the divorce proceedings are issued. The issuing of divorce proceedings however provides a useful timetable for the parties to exchange information in relation to their financial affairs so as to encourage negotiations and potential settlement. Equally it is possible to deal with some issues, for example the payment of maintenance, in advance of other issues such as the division of pension funds and other capital assets.^{ix}. When will I be able to remarry? Neither party to a marriage is able to remarry until such time as a Decree Absolute is issued bringing the previous marriage to an end. In certain instances the Court is able to grant a Decree Absolute so as to allow a person to remarry even if all financial matters have not yet been resolved. The matter is in the Court's discretion and specific advice must be received.

x. ***How much will my divorce cost?*** Again given the difference in parties' circumstances it is impossible to provide any precise guide as to costs. At Benest & Syvret we will provide you with a detailed engagement letter setting out our applicable rates and provide you with regular updates as to the present level of costs and estimates as to future expense.

Financial Arrangements on Divorce

The resolution of matters relating to the children and finances are usually the most difficult part of any divorce. The process of becoming divorced, that is to say "unmarried" can be relatively straightforward by comparison.

At Benest & Syvret we endeavour to adopt a constructive approach to negotiations towards settlement of these matters. An agreed solution, rather than one imposed by the Court, is one that invariably works satisfactorily in practice.

The resolution of financial matters on divorce is known as ancillary relief. The Court has a wide variety of powers to make Orders in relation to a couple's assets. In exercising those powers the Court pays regard to the following factors:

- The welfare of a child of the family.
- The income, earning capacity, property and resources of each person.
- The financial needs, obligations and responsibilities of each person.
- The standard of living enjoyed by the family before the breakdown of the marriage.
- The age of each person and the duration of the marriage.
- Any physical or mental disability.
- The contribution made by each person to the welfare of the family, including looking after the home and bringing up children.
- The conduct of each party, but only if it is so bad that it would be unfair to ignore it.
- Any serious disadvantage to either person which would be caused by ending the marriage.

Given that the Court has a very wide discretion it is generally better to have an agreed solution to all financial matters rather than rely on the uncertain outcome of a Court hearing. A Court hearing will also add greatly to the expense.

A starting point to any negotiation is for each party to provide full and frank disclosure of all of their financial assets. The principle method by which this is done is by an exchange of documents known as Affidavit of Means.

This is a standard form provided by the Court and which is available on request. Once the affidavits have been exchanged the parties can also exchange questionnaires requiring disclosure of documentation so that a forensic analysis of the information provided can be achieved.

Our intention wherever possible is to achieve a clean break between the parties' finances. It is not always possible or appropriate to achieve a clean break where ongoing maintenance requirements for children or spouse are required.

Usually the family's main asset is the house in which the parties lived during the marriage commonly called the 'former matrimonial home'. The Court will regard the welfare of any children of the marriage as paramount.

The Court has various ways of dealing with the matrimonial home to ensure fairness between the competing needs of the parties and the children, whilst putting the needs of the children first.

The Court will also have regard to the other capital assets of the parties including any pension fund, stocks and shares, cars, personal chattels and insurance policies. The Court may also take into account funds which are anticipated to be received by one of the spouses in the near future, perhaps by way of inheritance. Specific advice is required to deal with the circumstances which obviously vary from couple to couple.

Our Service to You

We are a small firm and therefore able to provide a personal and sensitive approach. We appreciate that family disputes have a huge emotional impact. It is important that you choose a lawyer who will not only provide you with appropriate advice but also with whom you can communicate with absolute clarity.

At our first meeting we will provide you with an anticipated time table for the resolution of your family dispute together with a discussion about fees and the availability of Legal Aid if appropriate. Legal fees relate to the amount of time that is spent on case but it is usually possible to provide you with an estimate at a relatively early stage.

It is important that you provide us with all relevant detail. There is a heavy duty upon any party to divorce proceedings to provide full and frank information. We shall only be able to act in your best interests if we have all the information at our disposal.

Do's and Don'ts on Separation

At Benest & Syvret we are experienced in dealing with the difficulties that arise from divorce and separation. Here are a few do's and don'ts which in our experience remain valid for any separating parties:

Do	Don't
1. Remember that although you may no longer be together, both of you will always be the children's parents. Put the children first.	1. Tolerate threats or violence. Ask your lawyer how the law can help protect you.
2. Keep the door open to dialogue	2. Sign or agree to anything without speaking to your lawyer first.
3. Substitute politeness, if love is gone.	3. Let your partner undermine your confidence in your lawyer.4. Be aware of the positive benefits of counselling in helping you cope with your changing relationship with your partner.
4. Be aware of the positive benefits of counselling in helping you cope with your changing relationship with your partner.	4. Expect the best of your partner or of yourself – aspire to reasonableness.
5. Be ready to compromise – an agreement between you is more likely to work than an Order imposed by the Court.	5. Leave confidential documents where they can be found.

Please contact us to arrange a meeting or for more information on how Benest & Syvret can be of service.

Mr Philip Syvret, Advocate Nina Benest and Miss Françoise Binet are all members of the Jersey Family Law Association and are bound by its Code of Conduct. Advocate Nina Benest has served as the Association's Secretary and has sat on its Executive Committee since September 2004. The Executive Committee also sits as the Jersey Law Society's Family Sub-Committee and is responsible for reviewing and advising upon draft social legislation affecting family law. This guide is intended to provide outline details only and should not be considered as a substitute for specific legal advice.

Disclaimer.