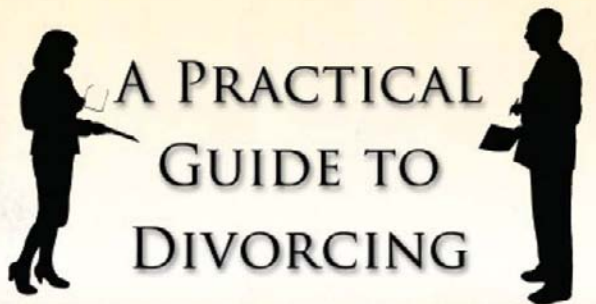


JOHN BOLCH

DO YOUR OWN DIVORCE



A PRACTICAL
GUIDE TO
DIVORCING
WITHOUT A LAWYER

DO YOUR
OWN
DIVORCE

Visit our How To website at **www.howto.co.uk**

At **www.howto.co.uk** you can engage in conversation with our authors – all of whom have ‘been there and done that’ in their specialist fields. You can get access to special offers and additional content but most importantly you will be able to engage with, and become a part of, a wide and growing community of people just like yourself.

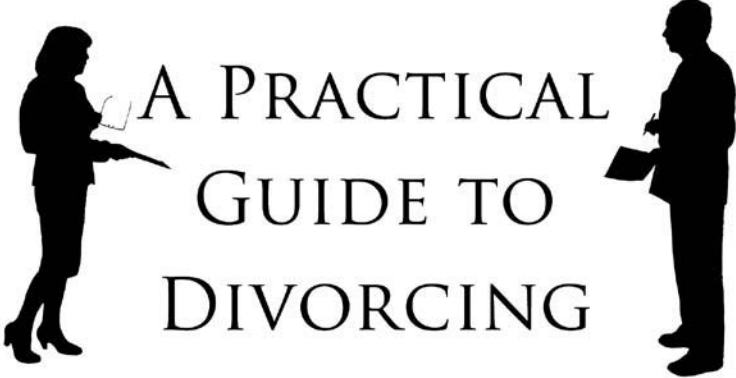
At **www.howto.co.uk** you’ll be able to talk and share tips with people who have similar interests and are facing similar challenges in their lives. People who, just like you, have the desire to change their lives for the better – be it through moving to a new country, starting a new business, growing their own vegetables, or writing a novel.

At **www.howto.co.uk** you’ll find the support and encouragement you need to help make your aspirations a reality.

You can go direct to **www.do-your-own-divorce.co.uk** which is part of the main How To site.

How To Books strives to present authentic, inspiring, practical information in their books. Now, when you buy a title from **How To Books**, you get even more than just words on a page.

DO YOUR OWN DIVORCE



A PRACTICAL
GUIDE TO
DIVORCING
WITHOUT A LAWYER

JOHN BOLCH

howtobooks

For my son James

Published by How To Content,
A division of How To Books Ltd,
Spring Hill House, Spring Hill Road
Begbroke, Oxford OX5 1RX
Tel: (01865) 375794. Fax: (01865) 379162
info@howtobooks.co.uk
www.howtobooks.co.uk

How To Books greatly reduce the carbon footprint of their books by
sourcing their typesetting and printing in the UK.

The right of John Bolch to be identified as author of this work
has been asserted by him in accordance with the Copyright, Designs and
Patents Act 1988.

© 2009 John Bolch

First published in electronic form 2009

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

ISBN: 978 1 84803 358 0

Produced for How To Books by Deer Park Productions, Tavistock
Typeset by Kestrel Data, Exeter

NOTE: The material contained in this book is set out in good faith for general
guidance and no liability can be accepted for loss or expense incurred as a
result of relying in particular circumstances on statements made in the book.
The laws and regulations are complex and liable to change, and readers should
check the current position with the relevant authorities before making
personal arrangements.

Contents

Introduction	1
Who this book is for	1
Why do your own divorce?	1
What if my spouse has a solicitor?	2
What if I need a solicitor myself?	2
Do I want a divorce?	3
Separation agreements	4
Limitations of this book	5
How to use this book	6
About the author	6
Acknowledgements	7
1 Divorce	9
A brief outline of divorce procedure	9
The ground for divorce	10
The petition	15
Arrangements for children	26
Before filing with the court	29
Filing with the court	30
Service of the papers	32
The acknowledgement of service	34
Applying for the divorce to proceed	40
The decree nisi	48

The decree absolute– and when to apply for it	50
Amended and supplemental petitions	53
Defended divorce and cross petitions	54
2 Children	56
Agree arrangements if you can!	56
Residence and shared residence	56
Contact	58
Other orders	60
Principles involved in deciding disputes	60
Applications to the court	62
Enforcing and varying orders	68
3 Child Maintenance	71
Agree if you can!	71
How much? – The child support formula	72
How long? – Duration of payments	75
Agreed court orders	75
Applying for child support	75
Dealing with the Child Support Agency	76
Enforcing payment	77
When the CSA cannot deal with the matter	79
School fees and top-up orders	79
4 Finances and Property	81
General principles	81
Separating finances and other practical steps	91
Why an order is required	95
Types of order	96
If terms are agreed – consent orders	99
If terms are not agreed – contested applications	101

Other required documents	109
The First Appointment	111
Financial Dispute Resolution appointment	113
The final hearing	114
Implementing the order	116
A short note about appeals	117
Enforcing orders	118
5 Domestic Violence	119
What is domestic violence?	119
Changing the locks	120
Court orders available	120
Applying for an order	121
Urgent applications	122
Responding to an application	123
The hearing	124
If an order is breached	125
6 Mediation	127
What is mediation?	127
Does it cost anything?	128
How does mediation work?	128
Agreements are not final	129
How do I find a mediator?	130
7 Costs and Legal Aid	131
Costs of the divorce	131
Costs in children proceedings	131
Costs in financial/property proceedings	132
Quantifying costs	134
Enforcing costs orders	134

Agreed costs	135
Am I eligible for legal aid?	135
What if my spouse has legal aid?	136
8 Final Thoughts	137
Checklist	137
Effect of divorce on wills	138
Retaining papers	138
Appendix 1 – Example Documents	141
Appendix 2 – Useful Addresses and Websites	243
Appendix 3 – Glossary	249
Appendix 4 – List of Divorce County Courts	258
Index	263

Introduction

WHO THIS BOOK IS FOR

Anyone who is not a family lawyer! That is, anyone who is seeking or contemplating a divorce, or anyone whose spouse has issued divorce proceedings against them. Even if you are separating from your spouse and do not wish to divorce at this time, this book will be useful to you as many of the principles remain the same, especially with regard to arrangements for children and sorting out finances (see also the section on separation agreements below).

WHY DO YOUR OWN DIVORCE?

To save money! Even if the divorce is completely straightforward, and there are no arrangements for children and finances to sort out, a solicitor will typically charge between £500 and £1000 to deal with the divorce for you, not including court fees. If there are arrangements for children or finances to sort out, then the solicitor's fees are likely to be many times that sum. Even if you cannot deal with everything yourself, dealing with one aspect (say, the divorce itself) without a solicitor will result in you making considerable savings in legal costs.

WHAT IF MY SPOUSE HAS A SOLICITOR?

Don't worry, this does not have to mean that you are at a disadvantage. This book will take you through all of the procedures and deal with all of the principles that you need to know to ensure that you achieve a similar result, in a similar time, to what you would achieve if you had a solicitor yourself. Your spouse's solicitor will have to deal with you in the same way they would deal with your solicitor.

If possible, keep all communication with your spouse's solicitor civil (and they should do likewise). Do not use letters as an opportunity to say all the bad things you want to say about your spouse – this will get you nowhere and reduce the chance of reaching agreement. Keep everything relevant to the issues at hand, as indicated by this book.

Keep copies of all correspondence with your spouse's solicitor and make a dated note of any telephone conversations.

WHAT IF I NEED A SOLICITOR MYSELF?

I believe that, with the help of this book, the majority of readers will be able to deal with their divorce and sort out arrangements for children and finances without having to instruct a solicitor. However, there may be times when matters become too complex for any reasonably capable person to deal with without legal help, and some occasions when you will have to instruct a solicitor, for example when a house sale or transfer is required (mortgage lenders will insist that a solicitor or licensed conveyancer deal with such transactions). This book will always inform you when

this is the case and, where appropriate, give you some indication of the likely cost involved.

If you do need to instruct a solicitor (other than simply for conveyancing work) then I would recommend that you consult one who is a member of Resolution, an organisation of family lawyers whose members follow a code of practice that promotes a non-confrontational approach to family problems. Such an approach reduces animosity, increases the chance of settlement (thereby reducing costs) and, above all, is in the best interests of children. For details of Resolution, including how to find a Resolution member, see Appendix 2.

DO I WANT A DIVORCE?

This may sound like a stupid question – if you’re reading this book, you’ve already decided that you want a divorce. However, before rushing to court you should ask yourself: am I absolutely certain that my marriage has irretrievably broken down? Remember, if it has not then the action of issuing divorce proceedings is likely to put an end to any chance of a reconciliation. If you are in any doubt, consider seeking marriage guidance at Relate (for details, see Appendix 2). If your spouse does not want to go to Relate, they can always advise you on your own. If it is clear that you and your spouse will separate (or if you have already separated), but it is not clear that the marriage is over, consider entering into a separation agreement, as described in the next section.

SEPARATION AGREEMENTS

It is quite common that a husband and wife will separate but neither will want to take divorce proceedings at that time. They will, however, want to sort out financial arrangements, and ensure that those arrangements are finalised (so far as possible – arrangements can only be completely finalised by a court order when a divorce takes place). In these circumstances, a written separation agreement (or deed) is usually drawn up. A typical example separation agreement can be found in Appendix 1. Note that such an agreement cannot deal with pension sharing (see Chapter 4), which requires a court order.

Note also that, as indicated above, separation agreements are not 100% final, as they do not prevent the court in any future divorce proceedings from ordering a different financial settlement, on the application of either party. However, courts do like parties to agree matters and therefore if the settlement set out in the separation agreement is broadly reasonable then the court is less likely to order something different. The principles set out in Chapter 4 will help you to reach an agreement that is broadly reasonable. If the parties have both taken some legal advice before signing the agreement (or even if one party has and the other party has chosen not to) then the court is even more likely to uphold it.

Two other points on separation agreements: firstly, they often include a term along the lines that if the parties are still separated after two years have elapsed since the date of the separation, then either party may then issue divorce proceedings on the basis of two year's separation, and the other party will consent to the divorce (see Chapter 1, and paragraph 9 of the example separation agreement). Note, however, that such consent is not

binding – consent has to be given to the court at the time of the divorce proceedings, and either party may change their mind before the proceedings are issued. However, a clause such as the one in the example agreement is all that can be done at the time of the separation, and is obviously an indication that both parties intend to consent. The second point is that the clause does not preclude either party from issuing divorce proceedings before the two year period has elapsed, for example if the other party commits adultery during that period.

What if the terms of a separation agreement are breached, for example one party refuses to implement the agreed terms of a financial/property settlement? Well, a separation agreement is a contract, so I suppose that theoretically the other party could sue for breach of contract, but I've never heard of it being done. In practice, that party would issue divorce proceedings and apply to the divorce court for a financial/property settlement – see Chapter 4. If a child maintenance agreement is breached, that party can make an application for child support to the Child Support Agency – see Chapter 3.

LIMITATIONS OF THIS BOOK

A book this size could not possibly cover every eventuality, and nor does it attempt to. For example, the book will not deal in detail with defended divorces, complex financial issues or children disputes, or serious cases of domestic violence. I will try to deal with the most common situations, but even something that starts off quite straightforward can become complex or out of the ordinary. In such cases, I will try to give basic advice and, where possible, an indication of where to go for further help.

HOW TO USE THIS BOOK

Read the relevant parts of this book before taking any action. So, if you want a divorce, have no minor children and have no finances to sort out, read Chapter 1, the consent order sections of Chapter 4 and Chapter 7. If you want a divorce, have minor children and finances to sort out, you will need to read Chapters 1 to 4, Chapters 6 and 7.

A large part of this book comprises advice on how to prepare the various documents required to comply with the relevant procedure (divorce, children application, financial application, and so on). In most cases the advice refers to example documents contained in Appendix 1. I suggest that you read through the example document before reading the advice upon how to complete it, which is contained in the main text.

Note that in this book the law is as stated at May 2009, as are all fees quoted in the book.

ABOUT THE AUTHOR

I qualified as a solicitor in 1985. Since then I have specialised in divorce and family matters. I was one of the first members of the Law Society's Family Law Panel (now the Family Law Accreditation Scheme) and am a long-time member of Resolution, formerly the Solicitors Family Law Association. I am also the author of the Family Lore blog (www.familylore.co.uk) and Family Lore *Focus* (www.familylorefocus.com).

ACKNOWLEDGEMENTS

Thanks to Sharon and Bev for encouraging me to get this book completed, Inga Rolfe for help with the typing, Yvonne Stevenson for encouragement and proof reading and Mike Semple Piggot for his help and encouragement. Any errors in the book are, of course, solely my responsibility.

This page intentionally left blank

Divorce

A BRIEF OUTLINE OF DIVORCE PROCEDURE

The procedure on an undefended divorce is essentially a five-stage process:

- 1 The party taking the divorce proceedings (the 'petitioner') issues (i.e. files with the court) the divorce petition together with supporting documents. The court will process the papers and send copies to the other party, along with an acknowledgement of service form.
- 2 The other party (the 'respondent') completes and files the acknowledgement of service, indicating (amongst other things) whether or not he or she intends to defend the divorce. The court will send a copy of the form to the petitioner.
- 3 If the divorce is not defended, the petitioner can then apply to the court for the divorce to proceed. This is known as 'applying for directions'.
- 4 If the court is satisfied that the petitioner is entitled to a divorce, it will fix a date for the pronouncement of the decree nisi, and notify both parties. It is not normally necessary to attend court when the decree nisi is pronounced.

- 5 After six weeks have elapsed since the date the decree nisi is pronounced the petitioner can apply for the decree absolute, finalising the divorce. The court will then seal the decree absolute and send copies to both parties.

A flowchart showing the basic procedure is shown in Figure 1.1.

Note: A divorce petition cannot be issued until one year has elapsed from the date of the marriage. This is an absolute bar, but note that it does not prevent the petitioner from presenting a petition based on matters that occurred before the expiration of the one-year period.

The first thing the petitioner needs to do is to decide upon the ground for divorce.

THE GROUND FOR DIVORCE

There is in fact only one ground for divorce – that the marriage has irretrievably broken down. However, the petitioner will have to prove irretrievable breakdown by proving one or more of the following:

- a) That the respondent has committed **adultery** *and* the petitioner finds it intolerable to live with the respondent (although for all practical purposes you do not really need to prove that you find it intolerable to live with the respondent). Note that adultery means the physical act of adultery – it is *not* sufficient to say that your spouse is having an affair or even that they are living with someone else. What this means in practice

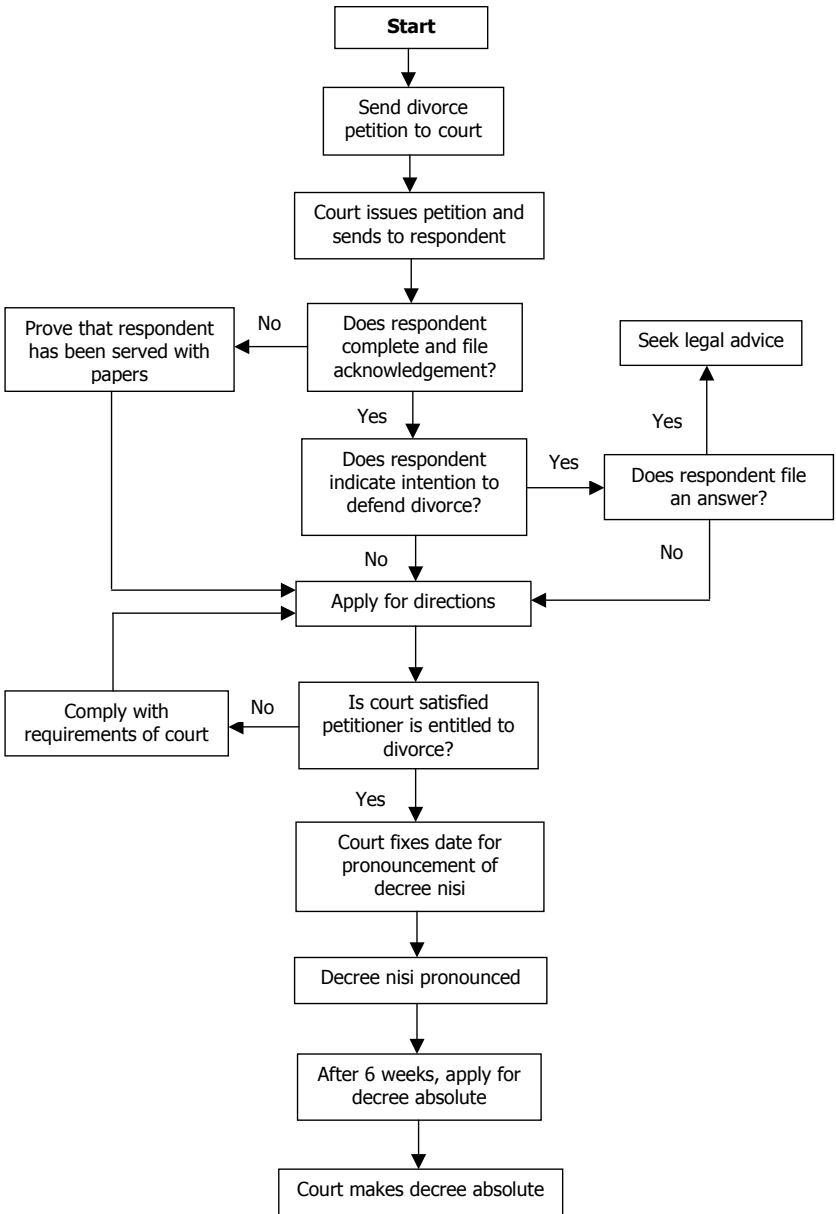


Figure 1.1 Simplified divorce procedure