

Guide to divorce and matrimonial proceedings

Divorce and Matrimonial proceedings in the TRNC are governed by the Family (Marriage and Divorce) Law 1/1998.

The procedure to be followed for divorce depends on whether it is an agreed divorce between you and your spouse or a non-agreed divorce.

Grounds for divorce

In order for one party to file for a divorce, both parties must have been married for at least one year prior to the date which the divorce case is filed.

There are several grounds for divorce, which are as follows:-

1. The other party has committed adultery;
2. The other party has caused suffering or physical harm through domestic violence;
3. The other party has committed, or has been involved in, murder or another serious crime or has been involved in dishonourable conduct;
4. The other party has abandoned the party bringing the divorce case for more than one year;
5. The other party suffers from mental illness or mental imbalance which makes it impossible or intolerable for the party bringing the divorce case to live with the other party, or poses a threat to the welfare of the children, and the court states that it would not be possible for the party suffering from the mental illness to recover within 3 years;
6. The relationship between the parties has suffered strain and the strain continues to make it impossible or intolerable to continue with family life. If only one party suffers strain in the relationship, the suffering party is the party who must start the divorce proceedings; or
7. The parties have lived separately on a continuous basis for three years prior to the date which the divorce case is filed.

In the event that the court rejects the application for divorce on the basis that the parties are unable to prove one of the grounds for divorce outlined above, then both parties must continue to live separately for a period of two years from the date on which the court rejected the application for divorce.

Division of joint assets

Joint marital assets refer to all movable and immovable property which is held in the name of either or both of the spouses which has been acquired after the date of marriage but before the date of separation, regardless of ownership or who holds the title to it. One exception to this is that, if the property was acquired before the date of marriage but with the intention of being used during the course of the marriage to benefit both spouses, it will need to be mentioned in the proceedings as a joint marital asset. Any assets which either of the spouses received during the course of the marriage from their family by way of gift or inheritance do not form part of the joint marital assets and the other spouse can have no claim on these.

Under the family laws of Cyprus, even if your marital home is registered in the sole name of either you or your spouse, this forms part of the joint assets and both spouses are legally entitled to remain in the house with occupancy rights until such time as the marriage is legally brought to an end. Even if the home is only in the sole name of one spouse, neither party has a legal right to change the locks or prevent either party from accessing the property in order to remove any clothes and/or personal items from the property.

Understandably, life within the home can become very difficult once you and your spouse have decided to separate. However, it does not mean one can force the other to leave. Should either spouse decide to leave and live elsewhere then they will still be allowed to have access to the property (within reason). The only ground on which the court can order one of the spouses to vacate the home is in the event that it can be proven that the spouse who is required to vacate the home has been violent to the other spouse. This would need to be substantiated with police and/or medical records.

In general, on divorce, each party is entitled, by law, to a minimum of 1/3 and a maximum of 2/3 of the joint assets acquired (whether in joint names or in the name of only one of the spouses) during the course of the marriage. The judge, taking into account all circumstances including the parties' earning capacity, financial resources, financial needs and responsibilities, standard of living, non-financial contributions such as the care of children and domestic work, physical and mental condition, age, the physical and mental condition of any children and the financial position and needs of any children and other factors, can decide to split the assets anywhere between these two proportions. Depending on the circumstances, the court can also order the party at fault to pay compensation to the other party. Either party, regardless of who is at fault, can apply for maintenance if it can be shown that they will be in a poor financial state as a result of the divorce.

Provisions for children and maintenance

If the divorce is an agreed divorce, provisions for children and maintenance must be agreed between the spouses and details of exact time and arrangements will need to be provided as these have to be detailed in the proceedings. If any children suffer from any physical or mental disabilities, details must also be provided and provisions must be made in respect of these. Furthermore, details of the days and times on which the spouses have access to the children and any agreed arrangements in respect of taking the children on holiday will also need to be provided.

However, if the divorce is not an agreed divorce, then the provisions for children and maintenance will be at the judge's discretion. In general, custody of young children is given to the mother unless there are strong reasons why the custody of a young child should not be given to the mother. The party who does not have custody can be ordered to pay maintenance for the child depending on their earning capacity and the child's needs.

The procedure for an agreed divorce

With regards to the division of the assets the simplest way to proceed with divorce is for the parties to reach an amicable agreement. With an agreed divorce, the whole process can be completed within a month. No details of the reasons for the relationship breakdown have to be given and you and your spouse will only have to attend the District Court of your residence briefly to sign and confirm your agreement to the division of the property.

The first stage in the divorce process would be to draft a the divorce petition and simultaneously submit any consent orders with regards to any immovable and/or movable property out of the TRNC. These would be filed in the court by the party petitioning for the divorce. The other spouse would then need to acknowledge service of the divorce pleadings and will need to attend court to sign documents and then a date for the hearing will be given.

The second stage will be the divorce hearing. You and your spouse will need to attend court to confirm the contents of the agreed division of assets in front of a Judge who will then grant the order for divorce which will be lodged at the District Court. At this stage the divorce is decree nisi unless the parties sign written documentation confirming that they will not appeal against the decision in which case the divorce will become absolute. Otherwise the divorce will not become absolute until the time period in which the parties can appeal has expired. If the female party wishes to remarry within a period of 302 days from the divorce order, she must produce to the court the results of a laboratory pregnancy test to confirm that she is not pregnant. Otherwise, she will be prevented from re-marrying for the period of 302 days from the date of the divorce order.

Our legal fees for an agreed divorce are £1,000.00 plus stamp duty and disbursements (usually around £250.00). Your spouse would not have to appoint a separate advocate so these costs could be shared between you.

The procedure for a non-agreed divorce

If, on the other hand, the divorce is not an agreed divorce, the matter becomes much more complicated. This process can be lengthy and take upwards of a year to conclude and the costs will be higher – the legal fees could be in the region of £2,000.00 - £5,000.00. Your spouse will have to pay legal fees to his/her own advocate in addition to this. Given the divorce is not agreed it can become acrimonious as all details of the relationship breakdown will have to be stated in pleadings and evidence will have to be given in court.

The pleadings will be prepared by an advocate of the firm and filed at the court. Your spouse will have to appoint their own advocate to then acknowledge service of the pleadings and file a response as to what your spouse agrees to and what he does not. The hearing date will then be set and the judge will then decide the division of assets, the provision maintenance for any children you may have and the maintenance of either party. If you believe that there is a risk that your spouse could try to dispose of some of the joint marital assets which are registered in the name of your spouse, an interim injunction can be obtained from the court to ‘freeze’ these assets preventing their sale/transfer until the conclusion of the case.

Documents/information required in order to proceed with an application for divorce

- Original marriage certificate
- Copy of passports and/or Identity (Kimlik) cards for both spouses
- The religions of both spouses
- Details of both spouses’ current residing addresses
- Confirmation of whether either spouse has been married previously (and if so, how many times)
- Confirmation of any other previous names/maiden name
- Where you lived when you got married and when you moved to Cyprus
- The occupations and monthly earnings of both spouses

- Details of any immovable property acquired during the course of the marriage, together with original title deeds
- Details of any movable property acquired during the course of the marriage (e.g. bank accounts, vehicles etc) together with original documents relating to this i.e. bank books and log books for any vehicles
- Details of any company/companies owned between the spouses, along with Company documents.
- Details of the contents of the martial home
- Details of any agreement which both spouses have reached for the joint marital assets to be divided between them or your requests in regard to these in the absence of any agreement
- Names and dates of birth of any joint children and, where the children are under 18, details of any agreements made between both spouses with regards to custody, contact and maintenance or your requests in regard to these in the absence of any agreement
- Details of any family animals and any agreements made between both spouses with regards to the maintenance
- If the divorce is not an agreed divorce, full details of the reasons for the divorce.
- If you have any property abroad, it may be possible to record your agreement in relation to this property as part of the Consent Order. However, you would need to seek the advice of a lawyer in that jurisdiction in relation to order relating to that property

This guide has been prepared by Advocate Naomi Mehmet of Naomi Mehmet & Partners
For more information, please contact Naomi on the details below

Email: naomi@nmplegal.com

Tel: 0090 392 816 0440

Fax: 0090 392 815 0702

Web: www.nmplegal.com

This guide is intended for general information purposes only and does not constitute legal or professional advice. Naomi Mehmet & Partners does not accept and specifically excludes liability for any loss or harm which may occur to any person as a result of relying on or otherwise using this information.