

## **Divorce in the British Virgin Islands**

A marriage cannot be legally ended or terminated by the parties to the marriage consenting to do so. In order for a marriage to be legally terminated the law must step in. The person seeking the divorce must approach the High Court in order to obtain certain documents which have the effect of legally terminating the marriage.

Since the law should step in to end a marriage it is therefore critical to examine the grounds on which the Court would grant a divorce.

The sole ground of divorce is irretrievable breakdown of marriage. To hold that the marriage has broken down irretrievably, the Petitioner or the person who approaches the High Court for a divorce must prove one of the following five facts as outlined in the Matrimonial Proceedings and Property Act, 1995:

- a) That the person to whom the Petitioner is married (hereinafter called the Respondent) has committed adultery and the Petitioner finds it intolerable to live with the Respondent;
- b) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. The Petitioner must therefore prove to the Court that the Respondent has behaved in a particular way, and secondly that the petitioner cannot reasonably be expected to live with him or her.
- c) That the Respondent has deserted the Petitioner for a continuous period of at least 2 years immediately before the filing for the divorce;
- d) That both the Respondent and the Petitioner have lived apart for a continuous period of at least 2 years immediately before the filing of the divorce and the

Respondent consents to the divorce being granted. It is important to note that it is not necessary for one of the parties to leave the matrimonial home or be physically separated for there to be separation. It is very important to know that you can be separated while living in the same house. The couple may be living in the same house but not in same household. For example, the parties to the marriage may sleep in separate bedrooms, prepare their own meals or communicate with each other only when it is absolutely necessary. Therefore, the Petitioner and the Respondent can be deemed to be legally separated while living under one roof if they are living separate lives.

e) That the parties to the marriage have lived apart for a continuous period of at least 5 years immediately before the filing of the divorce.

One of the above facts (along with other relevant information relating to the marriage) will be outlined by the Petitioner's lawyer in a document called a 'Petition for the Dissolution of the Marriage' so as to provide the High Court with evidence that the marriage has broken down irretrievably. The High Court will not grant the divorce if it is not satisfied on the evidence of one of the five facts outlined above that the marriage has broken down irretrievably.

It is important to note that the Court will not generally terminate the legal status of the marriage if there is no evidence before the Court of adequate arrangements for the welfare of each child of the marriage. The Court is therefore concerned about adequate arrangements being made for the children.