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Your questions answered

WHAT IS THE DIFFERENCE BETWEEN A CONDITIONAL ORDER AND A FINAL ORDER?

This Stowe client guide explains the difference between a conditional order and a final order and applies to both divorce and the dissolution of a civil partnership.

What is a conditional order?

The conditional order is a certificate that says the court doesn't see any reason you can't divorce or separate. It is often referred to as the "first stage" in the divorce process.

However, the conditional order does not bring the marriage to an end. At this stage, the couple remains married in the eyes of the law and can still move back from finalising the divorce at this stage.

How do you apply for a conditional order?

The applicant or joint applicants must fill out the D84 form when they are ready to apply for a conditional order within the divorce proceedings. The conditional order is pronounced following a 20 week cooling off period.

Once the judge has received the divorce application and conditional order application (including the D84 form) and the Acknowledgment of Service (signed by the respondent in the case of a sole application), the divorce application will be considered.

As long as the paperwork is completed correctly and the court is satisfied that the marriage has irretrievably broken down, both parties will receive a letter called the 'Certificate of Entitlement' confirming the date that the conditional order will be granted.

Once the conditional order is granted, both parties will receive a copy in the post.

Then, there is a 6-week wait before you can apply for the final order, which will bring the marriage and the proceedings to a conclusion.

What is a final order, and do I have to keep it?

The last stage of a divorce is the final order which legally ends your marriage or civil partnership.

You should keep your final order as you may require it if you remarry or change back to your maiden name.

Should I delay applying for the final order?

There are significant implications of the final order, and it is best to finalise any financial settlement before applying for a final order.

There are scenarios in which it might be advisable to delay application for final order as the grant of a final order can affect the following areas:

Wills

Once the final order is granted, any reference to a former spouse in your Will is ineffective.

If a Will has a former spouse as executor or beneficiary, this may have implications, and people should ensure a new Will is made at the time of the divorce.

Pension benefits

If a former spouse dies after the grant of a final order, they will lose any spousal benefits that may have been payable to you under the terms of any pension as a widow or widower.

Occupation of property

If you live in a home in your former spouse's sole name, then your right to occupy that property will end on the grant of the final order. You may be able to secure your right to remain there beyond the final order through a court order.

Need more information?

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Inheritance

If your former spouse were to die without a Will before the final order, you would be entitled to inheritance. After a final order, you lose the automatic inheritance entitlement you would have had as a widow or widower.

Financial claims

Financial claims between spouses can continue to exist beyond the point of the final order if they have not been formally dealt with.

It is important to deal with all financial matters before applying for the final order if possible. If not, it is not advisable to remarry until all financial claims have been dealt with or any claim will be lost to a former spouse.

How do I apply for/get a final order?

To apply for a final order, you must complete the form D36 or D36A if you initially made a joint application for the conditional order but wish to make a sole application at this stage.

It is worth noting that if you do not apply for a final order within 12 months of getting the conditional order you will have to explain the delay to the court.

How do I get a copy of my final order if I have lost it?

If you lose your final order, you can apply to the court for a copy.



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