



**Synnott  
Lawline**  
Family Law Advice & Services



# Divorce Factsheet

Professional Legal Advice on  
Dissolving a Marriage, Judicial Separation  
and Court Proceedings.

At Lawline Family Law Solicitors, our ethos is to ensure that our clients get expert legal advice. We are committed to achieving access to justice for all our clients. Our initial priority is to clearly understand the needs of our clients as every individual's case has a unique set of circumstances. Our legal team strives to achieve the best outcome for every client.

## Getting Divorced in Ireland - The Law

In order for a Court to grant a divorce it must be satisfied that both spouses have been living apart for a period or periods of at least 2 years out of the previous 3, that there is no prospect of a reconciliation and that proper financial provision exists or is put in place by the Court for the spouses and any dependent members of the family. The couple must have been living apart from one another for at least 2 out of the previous 3 years before the application is made. (Before 1 December 2019, this was 4 out of the previous 5 years.) The Family Law Act 2019 also provides a new definition of the term 'living apart'.

## Dissolving a Marriage

Once a Court grants a divorce it means that your marriage to your spouse is dissolved. You are then free to remarry or enter into a civil partnership. Upon granting a decree of divorce the Court will also make Orders as to the actual terms of your divorce – this is what is referred to as 'Ancillary Orders'. The Court will make Ancillary Orders as to Custody and Access arrangements for any dependent children, Orders in relation to what will happen to your family home, Orders in relation to maintenance and any other property and assets including pension policies. The Court will also make an Order extinguishing inheritance rights.

## Judicial Separation

A Judicial Separation is where the Court makes an Order formally declaring that you and your spouse are no longer legally obliged to live together. The Court then decides upon the actual terms of your separation – this is what is referred to as 'Ancillary Orders'. The Court will make Ancillary Orders as to Custody and Access arrangements for any dependent children, Orders in relation to what will happen to your family home, Orders in relation to maintenance and any other property and assets including pension policies. The Court may also make an Order in relation to inheritance rights.

## Court Proceedings

Whether your application for a divorce is contentious or very straightforward court proceedings must issue. It is not possible to obtain a divorce without a Judge formally granting the decree. In deciding whether to make the ancillary orders referred to above the Court must have regard to the following factors:

- **The income, earning capacity,** property and other financial resources which each spouse has or is likely to have in the foreseeable future;
- **The financial needs,** obligations and responsibilities which each has or is likely to have in the foreseeable future;
- The **standard of living** enjoyed by the family before proceedings were instituted or before the separation occurred;

# Divorce - Professional Legal Advice

- The **ages of each spouse**, the duration of the marriage and the length of time the couple lived together;
- Any **physical or mental disability** of the spouses;
- The **accommodation needs** of each spouse;
- The **effect on the earning capacity** of each spouse of the marital responsibility assumed by each while they lived together and the degree to which the future earning capacity of a spouse is impaired for having given up the opportunity of paid employment to look after the home or care for the family;
- The **conduct of each of the spouses**, if such that the Court considers it would be repugnant to justice to disregard it;
- The **contributions which each of the spouses has made** or is likely in the foreseeable future to make to the welfare of the family including any contribution made by each to the income, earning capacity, property and financial resources of the other and any contribution by looking after the home or caring for the family;
- The **value to each of the spouses** of any benefit which the spouse will forfeit;
- The **rights of any person other than the spouses** but including a person to whom either spouse is remarried;
- The Court must also have regard to the terms of any **Deed of Separation or Separation Agreement** signed by the spouses.

## Divorce - Frequently Asked Questions

### How long does a Divorce take in Ireland?

This is usually the first question a client asks when enquiring about their divorce. It is a difficult question to answer as it depends on many factors but in short it will come down to whether or not the matter will be contested by the other party and whereabouts in Ireland the client is based (as the lists for hearings depend on the Circuit).

There are usually multiple issues to address when a couple separate, such as children, finances, pensions and property. If the couple have agreed the terms on their separation one spouse will need to instruct a Solicitor to draft a Civil Bill (the Divorce document) and the accompanying Affidavits and to apply to the court so that these papers can be filed and served upon the other party. Where there is such agreement, this is known as a Consent Divorce and the other party will not file a Defence. The respective Solicitors will draw up Terms of Settlement and the matter will be listed before a Court.

If the terms of separation cannot be agreed, this is known as a Contested Divorce takes longer to complete.

It is imperative that you engage a good family law solicitor to manage these matters for you and ensure that not only is the matter progressed efficiently and as quickly as possible but that you do everything to get the result you want.

# ? Divorce - Frequently Asked Questions

## Who gets the home in a Divorce in Ireland?

The house is most often to the forefront of a client's mind when they book a consultation following the breakdown of marital or cohabitation relations.

As mentioned above, in a consent divorce where the parties can reach an agreement as to how to divide their assets including the family home, this can be decided upon by the parties who can then draw up the Terms of Settlement to reflect this. We would then usually seek a Ruling Agreement whereby we would ask a court to approve these Terms of Settlement. Where this is not the case and the divorce is contested, there are many factors which will be considered:

## Who will the children live with?

What were the parties respective monetary investments to the property?

What other contributions did each party make towards the property?

Where the matter is not agreed and it is a contested divorce, the court can make the following orders:

- Sale of the home and the proceeds of this sale are then split between the parties (these proceeds can be divided in differing ways such as 50/50, 80/20 etc...)
- Property Adjustment Order – this occurs where one of the parties interest in the home is transferred to the other party;
- Deferred Property Sale – this can occur when there are young children involved

## Who pays the Legal Costs in a Divorce?

Each Party will bear their own costs and these can range from €4,000 plus Vat to more depending on whether or not the divorce is contested and what is involved such as a family home, pensions, children. We pride ourselves on being extremely competitive when it comes to pricing as we feel that everyone deserves legal representation and assistance with these matters.

## Do I need a Solicitor for Divorce?

You do not have to use a solicitor or a barrister when getting a divorce. If you wish, you can represent yourself and there are companies offering what is now termed "DIY Divorce" However we have had clients who have managed their own divorces and due to the complex issues that are involved there are often mistakes made in respect of the division of pensions or situations whereby the parties were not fully advised or aware of their rights under the legislation and agreed to terms that were not favourable to them.

# ? Divorce - Frequently Asked Questions

## How does a court decide who gets what?

### Will my husband be entitled to my savings or pension?

The Irish Constitution dictates that “proper provision” is made for all parties involved upon Divorce. There are certain criteria that the court will use when deciding what exactly such proper provision is, this criteria includes the following:

- Each Parties income and earning capacity; what property and other financial resources such as savings and pensions each party has or will have in the future;
- Each Parties needs, responsibilities and obligations at present and into the future;
- Contributions made by each party towards the family’s welfare – these can be financial or caring for the family
- The Length of time of the marriage;
- What the parties standard of living had been prior to the marital breakdown;
- The age and health of each of the parties
- Any accommodation needs of the parties such as providing a second home for the family
- We have a no fault divorce policy in Ireland but should either party behave in such a way as to make it unreasonable for the court to disregard such behaviour this will also be looked at by the court
- the rights of any other person other than the spouses but including a person to whom either spouse is married.

## Can I Divorce without Going to Court?

No. A Decree of Divorce can only be awarded by the courts in Ireland

## Where do I start with Divorce?

Mediation is always the recommend first step where there is a marital breakdown but if there is no possibility of mediation a good family law solicitor should be your next contact.

## What are grounds for Divorce?

A court must be satisfied that the following criteria have been met:

- The parties have been living apart for a period amounting to 2 out of the last 3 years;
- There is no reasonable prospect of reconciliation;
- Proper Provision has been (or will be) made for each person, dependents and children (as discussed above)

## What does the Court mean by ‘Living Apart’?

This does not necessarily mean that you have been living under separate roofs. Although you may remain in the same dwelling the parties must be in a position to show to the court that you have been leading separate lives.

# Contact our Family Law Department. We are here to Help

If either you or your spouse is contemplating an application for divorce please contact our family law department. One of our family law specialists will be happy to discuss your case with you in absolute confidence and will provide guidance and expertise on how best to represent your interests in the context of divorce.

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