

FAMILY LAW - GENERAL INFORMATION

Leaflet No. 2.



LEGAL AID BOARD

This leaflet is not an interpretation of the law.

LEAFLET No. 2

FAMILY LAW – GENERAL INFORMATION

COUNSELLING AND MEDIATION

A number of organisations provide counselling for marriages in trouble with a view to assisting couples to reconcile their differences.

A trained mediator can help a couple who have decided to separate to negotiate the terms of separation. A mediated agreement is not legally binding and a person wishing to make it legally binding should consult a solicitor.

For further information see Legal Aid Board Leaflet No. 3. Separation

SEPARATION

A formal separation can be effected either by way of a separation agreement or a court order. A separation agreement is a legally binding contract made between spouses. If spouses cannot or do not wish to enter into separation agreement, either spouse may apply to court for a judicial separation. The separation agreement or order can deal with a number of additional matters including, children, financial provision and property.

Neither a separation agreement nor a judicial separation entitles a spouse to re-marry.

For further information see Legal Aid Board Leaflet No. 3. Separation

DIVORCE

A marriage can be ended by getting a divorce decree from a court. A divorce decree enables a former spouse to re-marry. Spouses must have been living apart from each other for four of the five years prior to beginning the divorce proceedings. The divorce can deal with a number of additional matters including, children, financial provisions and property.

For further information see Legal Aid Board Leaflet No. 4. Divorce

NULLITY

A marriage can be treated as though it never took place where some defect or impediment existed at the time of the marriage. In these circumstances, a court can grant a nullity decree. This allows both parties to the marriage to re-marry. A Church annulment however, does not allow for re-marriage in Irish law.

For further information see Legal Aid Board Leaflet No. 5. Nullity

MAINTENANCE

Maintenance is financial support paid by a person for the benefit of a spouse and / or dependent children.

A spouse can apply for maintenance even if living with the other spouse.

A parent can apply for maintenance for a dependent child from the other parent, regardless of whether or not the parents are married to each other. A dependent child is a child under eighteen years, a child under twenty three years who is in full time education, or a child dependent on its parents due to disability.

The maintenance may be agreed between the parties. If the parties cannot agree, it will be necessary to apply to the District or Circuit Court depending on the amount of maintenance being sought. At present, the District Court may award any amount up to €500.00 per week for a spouse and €150.00 per week for each child. If sums greater than this are sought, it is necessary to apply to the Circuit Court.

Both the District and Circuit Court can make lump sum orders for maintenance, although the District Court cannot make an order for more than €6,349.00.

For further information see Legal Aid Board Leaflet No. 6. Maintenance

DOMESTIC VIOLENCE

A court may grant protection, barring and / or safety orders against a spouse or partner. These orders are made where it is necessary to protect the welfare or safety of the other spouse / partner and / or dependent children.

Similar orders can be obtained by a parent against an adult child.

Failure to comply with any of these orders is a criminal offence.

For further information see Legal Aid Board Leaflet No. 7. Domestic Violence

CHILDREN - CUSTODY, ACCESS AND GUARDIANSHIP

Custody is the physical day-to-day care and control of a child.

Access is the contact between a child and the parent with whom the child does not ordinarily reside.

Guardianship is the legal relationship between parents and their child(ren). It involves the duty to maintain and properly care for a child and the right to make decisions about a child's education, religious upbringing, health and general welfare.

If the parties cannot agree between themselves, disputes about custody, access and guardianship may be determined in court. The court will consider the child's welfare to be the main consideration.

For further information see Legal Aid Board Leaflet No. 8. Children and Family Law

INHERITANCE

Where a person dies having made a valid will, his / her spouse has a legal right to:-

- half of the estate, if there are no children; or
- one third of the estate, if there are children.

A spouse can choose to take the legal right or any gift made in the will.

Where a person dies without having made a valid will, his / her spouse has a legal right to:-

- all of the estate, if there are no children; or
- two thirds of the estate, if there are children.

A child has no automatic right to a share in his / her parent's estate where the parent died having made a valid will. However, the High Court can award a child a share of a parent's estate where it finds that the parent "*failed in his moral duty to make proper provision for the child in accordance with his means*".

For further information see Legal Aid Board Leaflet No. 9. Wills and Inheritance

THE FAMILY HOME

The family home is a dwelling where a married couple ordinarily reside. The law provides that the family home may not be sold or mortgaged without the consent of both spouses. This applies regardless of which spouse owns the family home. The spouse who owns the family home may, however, transfer the family home into the joint names of both spouses or into the sole name of the other spouse without having to pay stamp duty.

Where a court grants a judicial separation or divorce, it may make a number of orders affecting the family home or other property.

For further information see Legal Aid Board Leaflets No. 3 (Separation) and No. 4 (Divorce).

Legal Aid Board, Quay Street, Cahirciveen, Co. Kerry. Tel: (066) 947 1000

Fax: (066) 947 1035 Locall No. 1890 615200 Website: www.legalaidboard.ie

Legal Aid Board Information leaflets

Leaflet No. 1.	Civil legal aid	Leaflet No. 9.	Wills and inheritance
Leaflet No. 2.	Family law - general	Leaflet No. 10.	Customer care and complaints procedure
Leaflet No. 3.	Separation	Leaflet No. 11.	Applying for legal services
Leaflet No. 4.	Divorce	Leaflet No. 12.	Withdrawal of legal services
Leaflet No. 5.	Nullity	Leaflet No. 13.	Financial eligibility
Leaflet No. 6.	Maintenance	Leaflet No. 14.	Civil legal aid for complainants in rape and certain sexual assault cases
Leaflet No. 7.	Domestic violence	Leaflet No. 15.	Collaborative Practice
Leaflet No. 8.	Children and family law		