

# SEPARATION

**Leaflet No. 3.**



# LEGAL AID BOARD

**This leaflet is not an interpretation of the law.**

## LEAFLET No. 3

### SEPARATION

Where a spouse no longer wishes to co-habit with the other spouse, it is possible to become legally separated. This can be done by:-

- the parties entering into a separation agreement; or
- getting an order of judicial separation in court.

#### Separation agreement

A separation agreement is a legally binding written contract between a husband and wife setting out their future rights and duties. Such an agreement is also known as a Deed of Separation. The agreement will include a number of terms, including:-

- an agreement to **live apart** and not to disturb or interfere with the other spouse;
- arrangements regarding responsibility for, and care of, the dependent **children**, including the level of contact (access) that each spouse will have with the children;
- the amount of **maintenance** to be paid for the support of the dependent spouse and children and how and when the maintenance is to be paid;
- arrangements regarding ownership and occupation of the **family home** and any other property and the responsibility for paying any mortgage(s);
- arrangements regarding any **property** acquired by either spouse after the date of their separation;
- an agreement in relation to the rights of the spouses to **inherit** from each other. Such an agreement does not affect the rights of any children to inherit from their parents; and
- any **other agreement** between the spouses.

After separating, a spouse may wish to continue to benefit from the other spouse's occupational pension. However, as trustees of a pension scheme are not obliged to honour a term in a separation agreement that varies pension rights, it is generally necessary to get a court order.

Social welfare pensions are not affected by the terms of a separation agreement.

#### Judicial separation

If spouses cannot reach a separation agreement or if only one spouse wants to separate, an application can be made to the court for an order for judicial separation.

## **Advice on counselling and mediation**

A solicitor advising a person about judicial separation is required to give advice about:-

- counselling services, to help bring about a reconciliation; and
- mediation services, to help negotiate the terms of a separation agreement.

## **Grounds for judicial separation**

A court can grant an order for judicial separation on one or more of the following grounds:-

- adultery;
- unreasonable behaviour;
- desertion for a continuous period of one year prior to the time of the application;
- spouses living apart for one continuous year prior to the time of the application and both spouses consent to a decree being made;
- spouses living apart three years, whether or not the other spouse consents; or
- no normal marital relationship has existed between the spouses for at least one year.

## **Ancillary or additional orders**

In making an order for judicial separation, the court may also make ancillary or additional orders in relation to matters such as:-

- **custody and access** arrangements in relation to dependent children;
- **financial provision** for the dependent spouse and children by means of maintenance to be paid at fixed intervals and / or lump sums;
- **exclusion** of a spouse from the family home by giving the other spouse the right to reside in the family home, for life or for a fixed period;
- **barring** of a spouse from the family home by prohibiting that spouse from entering it and from using or threatening violence against the other spouse and / or their children. Alternatively, without prohibiting a spouse from entering the family home, the court may make a safety order prohibiting a spouse from using or threatening violence against the other spouse or their children;
- **property arrangements** in relation to the family home and other family property for the benefit of either spouse and / or dependent children, for example:
  - giving one spouse the right to occupy it for life or for a fixed period;
  - sale of the property subject to conditions;
  - placing property in joint names or in the sole name of one of the spouses;  
or
  - any other relevant orders;

- **financial compensation** making provision for the future financial security of a spouse through insurance policies and requiring either spouse to:
  - take out a life insurance policy for the benefit of the applying spouse or dependent child; and / or
  - assign the benefit of an existing insurance policy to the applying spouse; and / or
  - pay the premiums on a policy;
  
- **inheritance / succession** matters whereby the rights of either spouse to inherit from the other spouse may be extinguished. The court must be satisfied that adequate and reasonable provision has been made for a spouse before it will extinguish his / her rights. However, unless the court orders otherwise, there are still certain circumstances, where a spouse can apply to court for a share of the estate of the other spouse;
  
- **pension arrangements** adjusting the pension entitlement of either spouse. However, the court will only make a pension adjustment order if proper provision has not been, or cannot be, made for the spouse and children through the making of other financial or property orders. A spouse can seek such an order either for his / her own benefit or for the benefit of dependent children;
  
- **emergency / temporary** matters can be dealt with before the hearing of an application for a judicial separation, for example where one spouse is:
  - incurring debts and endangering the family home or other property;
  - threatening to remove money from bank accounts or to spend or hide a redundancy / gratuity / compensation / damages payment that s/he is about to receive or has recently received; or
  - threatening to remove or sell household contents or other family assets.

## Re-marriage

Separation does not give the spouses a right to remarry.

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

**Fax: (066) 947 1035 Locall No. 1890 615200 Website: [www.legalaidboard.ie](http://www.legalaidboard.ie)**

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