

DIVORCE

Leaflet No. 4.



LEGAL AID BOARD

This leaflet is not an interpretation of the law.

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Where a spouse wishes to end an existing legal marriage, an application must be made to court (the Circuit Court or High Court) for an order for divorce. It is not possible to obtain a divorce by agreement between the parties.

Advice on counselling and mediation

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

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

Grounds for divorce

A court will grant a divorce if:-

- the spouses have lived apart for a period or periods amounting to at least four years during the previous five years; and
- there is no reasonable prospect of a reconciliation between spouses; and
- it is satisfied that proper provision has been, or will be, made for the spouses and dependent children.

Ancillary or additional orders

In making an order for divorce, 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 / or 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** rights of each spouse against the other are extinguished when a divorce is granted. However, there are still certain circumstances where a former spouse may apply to court for a share out of the estate of his / her former 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 a dependent child. Where a spouse benefits from the making of an order adjusting pension rights in judicial separation proceedings, the court may increase the benefit in subsequent divorce proceedings;
- **emergency temporary** matters can be dealt with before the hearing of an application for a divorce, 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

A decree of divorce gives the parties a right to remarry.

A number of matters are affected by a remarriage, for example, a divorced person who remarries:-

- cannot continue to claim maintenance for themselves from their former spouse; s/he can, however, claim maintenance in respect of dependent children of the former marriage;
- cannot apply for any share of the estate of his / her former spouse when that former spouse dies; and
- cannot obtain a property adjustment order in his / her favour.

Foreign divorce

Where a person gets a divorce outside Ireland, the divorce may be recognised in Ireland if it was obtained in a country where either spouse was domiciled.

Domicile is a complicated legal concept. In general terms, however, a person is domiciled in the country where s/he is resident and intends to reside permanently. It is possible to apply to court for a declaration as to the validity of a foreign divorce.

If a foreign divorce is valid, the divorced person:-

- is entitled to remarry;
- may be entitled to seek financial and property orders against his / her former spouse, provided that the divorced person applying for such orders has not remarried;
- may seek protection under the domestic violence legislation;
- is not entitled to inherit from the estate of his / her former spouse; and
- is not entitled to the protection given to spouses in respect of the family home.

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