

DIVORCE

Leaflet No. 3



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LEAFLET No. 3 - DIVORCE

Divorce is a dissolution of a marriage. It ends the marriage and the parties can marry again. Only a Court can grant a divorce in Ireland.

When granting a divorce, the Court can make orders about what the future living arrangements, contact, and financial responsibility will be for the children of the marriage, as well as in relation to the property of the marriage and pension arrangements.

How do I obtain a divorce?

If you wish to end an existing legal marriage, you must apply to court (the Circuit Court or where there is a significant amount of money or high value property involved, the High Court) for an order for divorce. It is possible to agree the terms of a divorce between a husband and wife, husband and husband and wife and wife. However, the Court must grant the divorce. You do not need to first obtain a legal separation to get divorced. On the 16th of November 2015 same-sex marriage was legalised in the Republic of Ireland. As such divorce laws and regulations also apply to couples in same-sex marriage.

What advice will a solicitor give me?

A solicitor will explain the process of seeking a divorce and what other orders a court might make when it is granting a divorce. A solicitor is also obliged to advise you of:

- Counselling services that may be able to help bring about a reconciliation between you and your spouse;
- Mediation services that may be able to help you and your spouse negotiate and agree the terms of a divorce (Please note that a mediation agreement does not constitute a divorce but can assist parties in agreeing the terms of the divorce); and
- The possibility of negotiating a separation agreement instead of getting a divorce.
- A judicial separation is an alternative option to a legal separation. When a couple cannot agree the terms by which they will live separately, either person can apply to a courts for a 'decree of judicial separation'.

On what grounds would a court grant a divorce?

A court will grant a divorce if:-

- You have lived apart for a period or periods of at least two years during the previous three years;
- There is no reasonable prospect of a reconciliation between you and your spouse; and
- It is satisfied that proper provision has been, or will be, made for each spouse and any dependant children.

Living apart does not necessarily mean living in different houses; it is possible that if you are living separate lives under the one roof that the Court will still consider that you have met this requirement.

Do I need to be legally separated in order to get a divorce?

No it is not necessary to obtain a legal separation in order to get a divorce.

Additional orders

In making an order for divorce, the court may also make 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 live in the family home, for life or for a fixed period;
- **Barring** of a spouse from the family home by preventing that spouse from entering it and from using or threatening violence against the other spouse and/or their children. Alternatively without preventing a spouse from entering the family home, the court may make a safety order stopping 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 live in it for life or for a fixed period;
 - ordering the sale of the property subject to conditions; or
 - placing property in joint names or in the sole name of one of the spouses; or
- **Financial compensation** providing for the future financial security of a spouse through assurance 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. After a divorce the parties are no longer spouses of each other and thus do not have spouse's normal inheritance rights. However, there are still certain cases where a former spouse may apply to court for a share out of the estate of his / her former spouse;
- **Pension arrangements** changing the pension entitlement of either spouse. However, the court will only do this 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 look for 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 changing pension rights in judicial separation proceedings, the court may increase the benefit in later divorce proceedings;

- **Emergency temporary** matters can be dealt with before the hearing of an application for a divorce. Interim orders can be granted for issues of an emergency nature, these for example where one spouse is:
 - Running up 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.

Can I remarry after getting a divorce?

Yes. A decree of divorce gives you a right to remarry.

If you remarry you:

- Cannot continue to claim maintenance for yourself from your former spouse; you can however, claim maintenance in respect of dependent children of the former marriage;
- Cannot apply for any share of the estate of your former spouse when he or she dies; and
- Cannot get a property adjustment order in your favour.

Can my foreign divorce be recognised in Ireland?

If you get 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 lives and intends to live permanently. It is possible to apply to court for a declaration as to the validity of a foreign divorce.

Foreign divorces can also be recognised depending on a number of factors including when it was obtained and in which country or jurisdiction. Because of this it is best to seek legal advice in relation to whether a particular foreign divorce can be recognised in Ireland.

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.

It should be noted that it is not essential to take legal proceedings for a divorce to be recognised. It may be necessary however if, for example, there is a dispute between the parties or with the Civil Registration Service or other authorities about whether or not the divorce is recognised.

Can I get a divorce if I'm in a civil partnership?

A decree of dissolution formally ends the civil partnership (which could be entered by same-sex couples between 2011 and 2015). If a court is satisfied that the required conditions are met, the court may make orders in relation to the payment of maintenance and lump sums, the transfer of property, the extinguishment of succession rights, pension rights etc.

Before a court can grant dissolution, the following conditions must be met:

- The parties must have been living apart from one another for a period amounting 2 out of the previous 3 years before the application is made
- Proper arrangements must have been made or will be made for the civil partners and any dependent child of the civil partners

When a decree of dissolution is granted, it cannot be reversed. Either party can apply to court to have any orders made under the decree – such as a maintenance order reviewed by the court. Once a decree of dissolution is granted the parties are no longer in a civil partnership and are **free to marry other people**. Since the commencement of the Marriage Act 2015, it is no longer possible to enter new civil partnerships.

For civil partnerships (where the civil partners have not subsequently married), the equivalent to divorce is **dissolution of civil partnership**. A person whose civil partnership has been dissolved can enter into a new civil partnership or get married. The Court may dissolve a civil partnership where the civil partners have lived apart for a period of, or periods amounting to, two out of the past three years and where proper provision is made for each of them.

If civil partners marry, then their civil partnership is automatically dissolved on their wedding day and dissolution of civil partnership is no longer available to the couple

The above is provided for information purposes only. It does not purport to be either a statement of the law or legal advice.

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