



Marriage Breakdowns – Your Options

If a marriage breaks down and someone goes to a Solicitor what is the first thing that should happen?

The first thing which we always explore is the possibility of mediation and reconciliation. We give clients the names and addresses of people qualified to help, which includes counsellors & mediators.

When we say counselling we mean both marriage counselling and personal counselling. Counselling and mediation are confidential; the evidence of marriage counsellors and mediators is not used in Court. Anything you say will not be used against you in Court or disclosed to your spouse.

What is a Family Law Court like; can anyone go in and hear what is happening?

All Family Law cases are heard in private. This means that the public are not allowed to sit in the Court room during the hearing of family law cases. Also, no wigs or gowns are worn in Court - such measures go some way toward relieving the stress that spouses feel when their cases finally come to Court.

If a marriage breaks up - what are the options available?

- Deed of Separation
- Judicial Separation
- Divorce
- Nullity

Deed of Separation

Many family disputes may be settled amicably between the spouses. A Deed of Separation is a document that may be drawn up and signed by the parties, where that marriage has broken down and where the parties do not wish to go to Court to agree the terms of the breakdown. A fundamental term of every separation agreement is an agreement that the parties will live apart. It can cover such things as maintenance, family home, children and succession rights.

Judicial Separation

The effect of getting a Judicial Separation is that both spouses are relieved of the obligation to live with one another.

There are six reasons a Court may give you a Decree of Judicial Separation:

- Adultery
- Behaviour by a spouse such that the other spouse can no longer be expected to reside with him/her.
- The spouse has left or forced the other to leave the home for a year before the application for the Judicial Separation.
- The spouses have lived apart for one year by agreement.
- The spouses have lived apart without agreement for three years.
- The marriage has broken down irretrievably for one year.

In granting a Decree of Judicial Separation the Court can make many different orders e.g. that one spouse maintain the other and the children, that the family home be transferred to one of the spouse, that neither spouse can make claim to the other's assets when they die, or that part of one spouse's pension be transferred to the other.

Divorce

Divorce, a recent development in Ireland, came in in 1997. It is almost identical to a judicial separation except that you can only remarry after getting your divorce. Whatever the Court decides (or you agree) at judicial or separation stage can be looked at again at the divorce stage. In Ireland we decided that we would not bring in what is called a "clean break" marriage breakdown legal code. This means that in Ireland you cannot be sure that the Courts will not re-open whatever arrangements you have made when you split up. However, we can take steps to get over this by drafting the agreement in such a way that it is difficult for a Court to change the terms at all or to any great degree.

When can you apply for a Divorce?

To get a Decree of Divorce from an Irish Court, you must prove that:

- You have lived separate and apart for four out of the five previous years.
- There is no reasonable chance of you getting back together.
- All the family will be properly provided for.
- Either spouse is either Irish or ordinarily resident in Ireland for one year before the application for divorce.

Nullity is also an option where the Court would make a finding that a marriage never existed. This is an extreme option which could leave the parties with little or no financial arrangements.

Alternative Dispute Resolution (ADR) is often used in family law matters. In sensitive matters ADR does not add to the stress, where a Court situation can. For family law matters such as separation, the forms of ADR used are structured negotiation, collaborative law and mediation. Our Managing Partner, John M. Lynch is an accredited Mediator, collaborative lawyer and practitioner of structured negotiations and he regularly uses these methods in family law

disputes, helping people to reach an agreement themselves rather than deciding the outcome for them.

For More Information

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