# Marriage Breakdown - The Options

If you are faced with marriage breakdown, and the uncertainty that comes with it, it is important for you to know your options.  When we are approached by someone who is going through difficulties in their marriage the first thing we explore is the possibility of reconciliation and mediation.  We can offer clients  names and addresses of people qualified to help. This includes counsellors and mediators.  Counselling and mediation are confidential.  The details of sessions with marriage counsellors and mediators is not admissible in Court.  Anything you say should not be used against you in Court.

If a marriage breaks up there are different options available. These include a deed of separation, judicial separation, divorce or, in certain circumstances, nullity.

## Deed of Separation

Many family disputes arising from marriage breakdown may be settled agreeably between the spouses.  A Deed of Separation is a contract that may be drawn up and completed by couples when their marriage has broken down.  They agree the terms of their separation rather than having the Courts do so.  Every separation agreement has a clause that the parties will live apart.  Usually, a Deed of Separation will provide for custody, access to children, maintenance, division of matrimonial property and succession rights.  The terms will be put in writing and signed by both parties.  While a child’s future education can be included, Court approval will be required for alteration of pensions.  If you enter into a Deed of Separation you cannot then, sometime afterwards, apply for a Judicial Separation.  You can still apply for a Divorce, but the Court will take into account the terms of the Deed of Separation.

## Judicial Separation

Following marriage breakdown a spouse may apply for a Judicial Separation.  If a couple get a Judicial Separation they no longer have to live together.  Both the High Court and the Circuit Court have jurisdiction to hear Judicial Separations.  If the family assets are in excess of €3 million the correct venue is the High Court.

In granting a Decree of Judicial Separation the Court can make various orders such as a Maintenance Order, Custody/Access order, Pension Order, and Property Adjustment Order.

## Divorce

Since 1997 people can apply for a Divorce in Ireland on marriage breakdown.

To get a Divorce it is necessary to satisfy the Court that:

1. You have lived apart for four out of the five previous years.
2. There is no reasonable prospect of reconciliation.
3. Proper provision will be made for all members of the family.
4. Either spouse is domiciled in Ireland at the date of issue of the proceedings or that either spouse has been ordinarily resident in Ireland for one year before the date of issue of the proceedings.

The first condition on living apart does not specifically mean that you and your spouse have to have lived in separate houses.  Spouses can live separate and apart while under the one roof.  The parties will have to satisfy the Courts that although they continue to live in the same home they lead separate lives. The main effect of divorce, as far as most parties are concerned, is that they can re-marry.

## Nullity

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 without any financial redress.  Therefore , in recent years, it has become rare.

***For further advice or if you wish to discuss any other legal area please contact*** [***gilliano@lynchsolicitors.ie***](mailto:gilliano@lynchsolicitors.ie)***or telephone***[***052-6124344***](tel:052-6124344)***.***

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