



Paul Brady & Co. Solicitors

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Marriage / Civil Partnership Breakdown

What are my options?

When a married couple or couple in a civil partnership decide to separate, there will be an initial informal separation. There will be either agreement or dispute as to how living arrangements, access, maintenance, expenses and property are dealt with.

This process is inadequate in the medium to long term for the following reasons:

- They remain your spouse;
- If you die, they will be entitled to part of your estate, regardless of whether you have excluded them from your Will;
- Assets you purchase after you separate are not protected from a claim from your spouse.

Mediation

This is a voluntary and confidential process which involves a series of meetings before an independent trained mediator to try and work out arrangements. It is not marriage counselling. The mediator assists the parties come work out non-binding heads of agreement. Thereafter the heads of agreement can be converted into a legally binding separation agreement through Solicitors, which is discussed in more detail below.

The 3 legal options available to separating spouse / civil partners are:

1. Separation Agreement
2. Judicial Separation
3. Divorce

1. SEPARATION AGREEMENT

a. Qualifying Criteria:

- ◆ Married / In a Civil Partnership;
- ◆ No longer in an intimate and committed relationship with the other person;
- ◆ No set period of time for living separately necessary.

b. Covers / Details:

- ◆ Agreement to live apart;



- ◆ Arrangements regarding custody and access;
 - ◆ Arrangements regarding ownership and occupation of the family home and any other property;
 - ◆ Provision for maintenance (children and/or spousal)
 - ◆ Indemnity from debts of the other spouse
 - ◆ Taxation;
 - ◆ Succession Rights
- c. Benefits:
- ◆ Legally Binding;
 - ◆ No involvement of the Courts;
 - ◆ No qualifying period delays;
 - ◆ Quicker / Cheaper than Judicial Separation
- d. Drawbacks
- ◆ Cannot alter pension entitlements;
 - ◆ Not clear what weight Agreement will be given at divorce stage;
 - ◆ If made a rule of Court, cannot avail of other ancillary orders available to separating spouses post being made a rule of court.
 - ◆ No right to re-marry.

2. JUDICIAL SEPARATION

- a. Qualifying Criteria:
- ◆ Married / In a Civil Partnership;
 - ◆ No longer in an intimate and committed relationship with the other person, for at least 1 year prior to the day the proceedings are instituted unless you can prove adultery or that your other half has behaved in such a way that you cannot be reasonably expected to live with them;
 - ◆ No requirement that the spouse be living apart, but they must no longer be in an intimate and committed relationship with one another;
 - ◆ A relationship does not cease to be intimate just because it is no longer sexual in nature
 - ◆ Couple cannot agree the terms the terms by which they are to live separately.
 - ◆ Cannot apply for judicial separation if you already have a separation agreement in place.
- b. Grounds:

- ◆ You must satisfy one of the 5 grounds, which is to be proved on the balance of probabilities:
 1. Other party has committed adultery
 2. Other party has behaved in such a way that you cannot be expected to live with them
 3. Other party has inflicted mental or psychological cruelty on you;
 4. Other party has deserted you for at least 1 year prior to the date of application;
 5. Court is satisfied that the marriage has broken down to the extent that a normal marital relationship has not existed between the parties for at least 1 year prior to the date of application;
- ◆ You must have been advised about counselling and mediation;
- ◆ In the majority of circumstances, the Court will seek to grant a Decree pursuant to the 5th ground where possible as no fault is attached.
- ◆ Court must be satisfied that proper provision has been made for the welfare of any dependents (children and /or spouse).
- ◆ Court can also make ancillary orders in relation to custody, access, maintenance payments, lump sum payments, transfer of property, extinguishment of succession rights, pensions.

c. Process:

- ◆ Family Law Civil Bill which sets out the grounds of your application;
- ◆ Sworn Statement of Means (assets, income, liabilities, expenses, pension details)
- ◆ Sworn Statement of Welfare (details of children & living arrangements)
- ◆ Solicitor's Certificate confirming you have been advised of alternatives (reconciliation, mediation, separation agreement)

d. Benefits:

- ◆ Legally Binding;
- ◆ Availability of ancillary relief orders;
- ◆ Can deal with pension adjustments;
- ◆ Greater weight given to Decree of Judicial Separation at divorce stage than would be to a Separation Agreement.

e. Drawbacks

- ◆ No right to re-marry.

3. DIVORCE

a. Qualifying Criteria:

- ◆ Married;
- ◆ One of the spouses must be domiciled (living in a place with the intention of residing there permanently) in Ireland at the date proceedings are instituted; or,
- ◆ Either spouse was ordinarily resident in Ireland for a period of 1 continuous year up to the date proceeding are instituted.

b. Grounds:

- ◆ No fault basis.
- ◆ Spouses must have lived apart for period of 2 of the previous 3 years:
 1. Living apart does not necessarily mean in separate dwellings
 2. Living apart means no longer being in an intimate and committed relationship;
- ◆ No reasonable prospect of reconciliation
 1. Reconciliation talks / mediation discussed;
- ◆ Proper provision will be made for the spouses and any dependent children
 1. A child is dependent if under the age of 18 or under the age of 23 and in full time education, or if a child has a mental or physical disability.
- ◆ You must have been advised about counselling and mediation;
- ◆ Court can also make ancillary orders in relation to custody, access, maintenance payments, lump sum payments, transfer of property, extinguishment of succession rights, pensions.

c. Process:

- ◆ Family Law Civil Bill which sets out the grounds of your application;
- ◆ Sworn Statement of Means (assets, income, liabilities, expenses, pension details);
- ◆ Sworn Statement of Welfare (details of children & living arrangements);
- ◆ Solicitor's Certificate confirming you have been advised of alternatives (reconciliation, mediation, separation agreement).

d. Benefits:

- ◆ Legally Binding;
- ◆ Marriage dissolved, free to re-marry;
- ◆ Doesn't affect your guardianship rights as a father or mother of a minor;
- ◆ Availability of ancillary relief orders;
- ◆ Can deal with pension adjustments;
- ◆ Cease to be a spouse for purposes of Succession Act, Family Home Protection Act.

e. Drawbacks

- ◆ Consequences for liability to tax - applicable thresholds will change;

We at Paul Brady & Co., Solicitors have over 40 years' experience in dealing with marriage breakdowns and if we can be of any assistance to you in relation to any of the above matters, then please contact us at the below details.

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