



# Paul Brady & Co. Solicitors

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## Marital Breakdown – Ancillary Relief

In the course of judicial separation and divorce proceedings, it will often be necessary to deal with additional matters in addition to the actual separation or divorce. These are known as Ancillary Relief Orders and are intrinsically linked to the obligation on the judiciary to ensure “proper provision” has been made for the spouses and dependents.

As part of your application for judicial separation or divorce, by way of the Family Law Civil Bill, you will make your claim for relevant ancillary orders. If you are the respondent to your spouse’s application, you will make your application for ancillary relief through your Defence and Counterclaim.

There is a mistaken belief in Ireland that there is a 50/50 split of assets on the separation / divorce. This is incorrect and it is the judiciary’s job to ensure **Proper Provision – Not Fair Division**. Each case depends on its own particular set of circumstances.

Ancillary Relief is largely financial in nature, and considerations include:

- income, earning capacity, property and other financial resources of each spouse;
- Financial needs, obligations and responsibilities of each spouse;
- Standard of living of each spouse;
- Age of each spouse, duration of marriage and time they spent living together;
- Any physical or mental disabilities;
- Contributions of each spouse to the welfare of the family (i.e. stay at home parent);
- Effect on earning capacity of each spouse of the marital responsibilities they assumed during the marriage;
- Any statutory income benefits either spouse is entitled to;
- Conduct of each spouse;
- Accommodation needs of each spouse.

Ancillary Relief Orders include:

- a. Spousal and Child Maintenance
  - Can be periodic payments (weekly, monthly) or lump sum payments.
- b. Transfer of Property
  - Can be an order to transfer property from one spouse’ name to other, or from joint names to one.



- c. Exclusive Residence
  - For life or such other time as the court may direct, to the exclusion of the other spouse.
- d. Property Sale
  - Often made subject to a number of conditions including how the proceeds are to be divided.
- e. Pension Adjustment
  - Important in judicial separation proceedings, where the spouse will remain as such until a divorce is granted. Order excluding the other spouse from any entitlements under the pension scheme.
- f. Extinguishment / Preservation of Succession Rights
  - Extinguishment of spouse's succession rights in a judicial separation situation. Not always necessary where a divorce decree has been granted as parties are no longer legally "spouses".
- g. Custody / Access / Guardianship
  - Who will become the children's primary carer, what access will the other parent have to the children and if the parents were not married when the child or children were born, what is the legal position regarding the children's guardians.

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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