

Family Law Services: Addressing Marital Breakdown



MJ O'Connor Solicitors
Turning legal advice into business sense

Introduction

Coping with marital breakdown is never easy. As well as facing the emotional trauma, you must tackle a range of daunting legal and financial issues that affect your home, your family, and your future.

At MJ O'Connor, our experience and expertise allows us to guide you through the complexities of marriage breakdown in a sensitive and considerate way. Practical, constructive advice from our team of dedicated Family Law specialists will allow you to make informed decisions, to resolve your issues, and, ultimately, to move forward with your life.

In this booklet, we explain the different options, the financial issues that can arise as a result of marital breakdown, and the professional, cost-effective advice we offer to help you through this difficult process.



Formalising Marital Breakdown

Several different methods of formalising of marital breakdown are recognised within the Irish legal system. Whether you require a Deed of Separation, a Judicial Separation or Divorce will depend on your personal circumstances and the length of time you have lived apart from your spouse.

You are not required to have a separation agreement in place before applying for either a Judicial Separation or a Divorce – indeed at this time the conclusion of a Deed of Separation is a bar to obtaining a Judicial Separation. However, given that spouses may not apply for a Judicial Separation until they have lived apart for a minimum period of 12 months and for a Divorce until they have lived apart for a minimum of four years, a separation agreement is often a practical way to sort out the financial and legal issues arising from marital breakdown during the intervening period.

Here, we explain the different methods of formalising marriage breakdown and what they mean for you.

Deed of Separation

When a marriage breaks down, spouses can formalise the terms of separation by drawing up a Deed of Separation with a solicitor. This document allows a separating couple to sort out legal issues such as: division of matrimonial property and inheritance rights, as well as custody, access, and maintenance of children, without going through the courts. When you are separated by deed, you are still legally married and therefore cannot remarry.

Judicial Separation

Spouses may seek a Decree of Judicial Separation through the Courts after 12 months of living apart. While legally ending the marriage, such a decree does not confer the right to remarry.

In granting a Judicial Separation, the Court usually makes ancillary orders addressing the legal and financial terms of the separation, such as maintenance, lump (capital) sums, and the division of matrimonial property (see 'Financial Issues'). An order is generally made to cancel one or both spouse's entitlement to a statutory share in the other's estate.

Divorce

As with a Decree of Judicial Separation, when a Divorce is granted, the parties to that marriage cease to be husband and wife. However, unlike Judicial Separation, it does confer the right to remarry. Divorce in Ireland is based on a 'no fault' system'.

To obtain a Decree of Divorce from an Irish Court, you need to satisfy the court that:

- > On the date the proceedings begin, you have lived apart from your spouse for four out of the five previous years.
- > There is no reasonable prospect of reconciliation between you and your spouse.
- > Proper provision is, or will be made for each spouse and dependent members of the family (i.e. your children).

In addition, the Court must be satisfied that one spouse is living in the State when the Divorce proceedings are finalised, or that one spouse was usually resident in the State for one year before the date on which the divorce is finalised.

As in the case of a Judicial Separation, the Court granting a Divorce will usually make ancillary orders addressing the legal and financial terms of the separation. In most cases, divorced individuals are no longer entitled to a specific share in each other's estate (although the court may make special provision for inheritance rights in certain circumstances).

For most married couples Judicial Separation and/or Divorce are generally obtained in the Circuit Court. However, when couples have a very high net wealth, such proceedings may have to be instituted in the High Court.

Financial Issues

Whichever option you choose, it is important to clarify the financial terms of the split. This will allow all family members to move forward and plan for the future.

In agreeing the terms of a Judicial Separation or Divorce, the Court must ensure that proper financial provision is made for each spouse and any dependents. To this end, the Court will make various orders regarding property, pensions and other assets, in an effort to distribute finances between the spouses.

Below we have outlined some of the key financial orders that a Court can make.

Property Adjustment Order

This is a Court Order which determines the transfer of ownership of the family property and/or any arrangements for its sale. The order must take into account the welfare of dependent spouses and any dependent children.

Financial Compensation Order

A Financial Compensation Order can direct either or both spouses to:

- > effect a life insurance policy for the benefit of the other spouse or dependent children
- > assign the whole or part of a life insurance policy for the benefit of the other spouse or dependent children
- > continue to pay the premiums on those policies









Pension Adjustment Orders

A Pension Adjustment Order entitles one spouse and/or dependent children to some or all of the pension benefits of the other spouse.

Pension Adjustment Orders can be made in respect of most types of pension schemes, but not in respect of pensions under the Social Welfare Acts.

Review of Wills

It is important to note that the content of your will is not automatically revoked in the event of a Divorce or Judicial Separation. In particular, if you have left a specific item to your spouse, this request will stand, despite your separated or divorced status.

Therefore, if you made your will prior to the marital breakdown, it is essential that you review and revise your will in line with your current circumstances.

How We Can Help

Marital Breakdown is complicated. At MJ O'Connor, we keep the process as simple and straightforward as possible. Our service is professional and confidential, and our Family Law specialists are always on hand to provide the expert advice you need, when you need it.

Our Services Include:

- > How to deal with the breakdown of a marriage by agreement
- > Advice on commencing Judicial Separation proceedings
- > Guidance through the process of initiating Divorce proceedings
- > Resolving financial settlements, property disputes, maintenance rights and other financial orders arising from Divorce and separation

The First Consultation

Your first consultation with us is not subject to time constraints, but usually lasts about an hour. This initial meeting is an opportunity to gather information and to discuss the options available to you in relation to your marriage breakdown.

We will explain what is involved in each course of action, give an indication of the timeframe involved, and provide a breakdown of potential costs.

After this meeting, you are under no obligation to use our services, or to proceed with the separation or Divorce.

Our Family Law Costs Policy

Many solicitors use a complex range of factors to charge for Family Law cases. However, this approach can be confusing and expensive for their clients. At MJ O'Connor, we offer a cost-effective service, and our fee structure is simple, manageable and transparent.

We Operate a fixed fee policy.

To further minimise the impact of costs, we use a structure of gradual billing, invoicing you for our work at the end of each month. This helps us to keep our charges as low as possible and makes payment more manageable for you.

Our billing is structured to ensure that 50% of the fixed fee has been paid on account 21 days in advance of a hearing date.

While most Family Litigation occurs in the Circuit Court, where High Court proceedings are necessary we will agree a similar cost structure in advance of instructions.



Contact us

If you have any questions on Family Law, please contact Seamas Turner on + 353 (0)53 91 22555 or email Seamas at **sturner@mjoc.ie**

For more information, you can visit our website at **www.mjoc.ie**

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