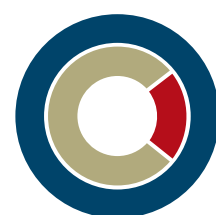


# STEP-BY-STEP GUIDE TO DIVORCE



MJ O'Connor Solicitors

## INTRODUCTION

This guide describes all of the steps required to apply for a divorce either by consent, i.e. where both parties are in full agreement regarding the terms of the divorce, or else where there is disagreement and the divorce application is contested.

The purpose of this guide is to explain the divorce application process in a step by step fashion from beginning to end in a detailed but hopefully still jargon free fashion

It is necessary to apply to the Circuit Court to get a divorce whether or not both spouses are in agreement regarding the terms (the High Court can also be used). This guide outlines the process under a number of different scenarios.

One of the main concerns of the court will be to ensure both spouses and any dependent children are financially looked after – what is referred to as proper provision. The term ‘proper provision’ is not defined anywhere in the legislation.

The spouse who applies for the divorce is referred to as the ‘Applicant’ and the other spouse then becomes the ‘Respondent’.

Broadly there are three possible situations:

**Divorce by consent:** where both parties are in full agreement regarding the terms of the divorce

**Contested divorce settled out of court:** where the parties initially disagreed but come to an agreement without the need for a contested court hearing to finally settle the matter

**Divorce requiring a contested court hearing:** where there is no agreement between the parties and the court is eventually required to settle the matter in a contested court hearing.

### The entitlement to a Divorce

To qualify for a divorce you must be able to meet the following basic conditions:

- You and your spouse must be ‘living apart’ for four out of the last five years. What represents a state of living apart is broadly defined and can include a situation where both spouses still live under the same roof.
- One spouse must be domiciled in the Republic of Ireland (this means having residence in the Republic of Ireland with the intention of living here permanently) or have lived in the country for one year before applying for a divorce.
- There must be no prospect of reconciliation.
- There must be proper provision for each spouse and any dependent children (it may require a court hearing to resolve this matter if there is no agreement between the spouses).

### THE STEPS (DIVORCE BY CONSENT)

Where both parties are in full agreement the following are the steps that the applicant and respondent must take to apply for a divorce by consent. One party must still act as the applicant and make the actual application.

## Choice of court venue

The parties need to identify the appropriate court venue to which the applicant spouse will make their application. The applicant or the respondent must reside, or work, within the jurisdiction, i.e. the geographic area, of the Circuit Court where this application is to be filed. There are eight court circuits – Dublin, Cork and six others which in turn cover a number of counties each.

## Overview of the process

The following are the main steps to be taken in applying for a divorce by consent:

The applicant files the application with the court.

The respondent confirms his/her agreement with the contents of the application.

The applicant confirms to the court that a copy of the application was provided to the respondent.

The respondent confirms to the court that he/she received the application.

Both parties disclose their financial status.

If there are dependent children, a statement relating to their care etc. is prepared.

Both parties confirm that they have considered other alternatives to a divorce.

A court date is set for the application to be considered.

## Documents required

### A. The Family law civil bill

The Family law civil bill is basically an application form. It contains two sections – the 'Indorsement of claim' and the 'Applicants claim'. The indorsement of claim is where the applicant sets out the details of the marriage as he or she knows them.

The applicant's claim section is used to list any orders, including 'ancillary reliefs', which both parties have agreed to apply for to the court. Ancillary reliefs are court orders relating to the financial affairs of the parties.

These orders typically relate to some or all of the following: maintenance, the family home, other property and assets, custody, succession rights, personal safety and the safety of children, and pensions. If the divorce is contested the court will decide the specific details of each order it decides to grant whereas if there is full agreement between the two parties the applicant can provide the details of what has been agreed.

The court will then decide whether or not to agree to these requests.

### B. Confirmation that the applicant has informed their spouse

The court will require formal confirmation that the applicant has informed their spouse of their application for divorce. This is done by completing an Endorsement and statutory declaration of service. This document must be sworn, i.e. signed, in the presence of a commissioner for oaths or a practicing solicitor. Most solicitors' firms offer this service and charge around €10.

### C. Letter of consent from the respondent

This is a letter from the respondent confirming that he or she consents to the divorce application and, if relevant, the court orders applied for in the applicant's claim section of the family law civil bill. See Family law civil bill which includes this letter.

#### **D. The financial position of the applicant and respondent**

Both parties are required to provide an Affidavit of means which is a sworn document where one sets out one's financial position, i.e. assets, liabilities, income and pensions, if any. It also asks for details of one's day-to-day living expenses.

Given that a key role of the court is to ensure that all parties (the spouses and any dependent children) will be properly catered for financially this document is key to providing the court with a complete picture of your financial situation.

Because this document is an affidavit it needs to be signed in the presence of a commissioner for oaths or a practicing solicitor. Most solicitors' firms offer this service and charge around €10.

#### **E. The welfare of children**

If there are dependent children of the marriage both parties need to complete an Affidavit of welfare. This document requires details about the care and health etc. of the children. Children, for this purpose, are defined as any born to or adopted by either spouse. It also includes children to whom either party is in loco parentis.

If the respondent agrees with content of the applicant's affidavit then there is no need for the respondent to also provide the same detail – their affidavit can simply refer to the applicant's version and confirm their agreement with its contents.

Because this document is an affidavit it also needs to be signed in the presence of a commissioner for oaths or a practicing solicitor.

#### **F. Respondent's entry of an appearance**

This is a very short document confirming that the respondent has received the family law civil bill and is thus fully aware of the divorce application.

#### **G. Confirmation that alternatives to divorce have been considered**

Both parties must provide a short certificate, signed by the parties or by their solicitor if legally represented. This short document essentially confirms that one is aware of the alternatives to applying for divorce, e.g. mediation, separation etc.

#### **H. Motion to rule**

A motion is simply a request to the court by the person submitting the motion. This motion is a request to the courts service to consider and, hopefully, grant the application for divorce, and any related orders applied for, on a date to be provided by the courts service.

Possible other documents required

#### **I. Separation agreement**

If the parties have previously separated it is possible that a Separation agreement (also called a 'Deed of separation') was drafted and agreed at that time. If there is such a document it must be filed in the court by the applicant with their Family law civil bill.

#### **J. Deed of waiver (family home and other property)**

Protection is provided for the family home of a married couple under the Family Home Protection Act 1976. The effect of this legislation is to prevent one spouse from acting in relation to the family home without the consent of the other spouse. The purpose of this Deed of waiver is to remove any doubt that this 'veto' by one spouse over the other is removed in relation to any future dealings in any property following a divorce, judicial separation or the execution of a deed of separation, i.e. a Separation agreement.

#### **K. Pension adjustments**

The terms of a divorce can include changes to the manner in which the benefits of either of the party's pension schemes, if relevant, are paid out. Any changes to a pension scheme requires a court order, called a Pension adjustment order. If the parties are in agreement then the pension adjustment order(s) can be prepared at the time of the divorce application for consideration by the court.

#### **L. Notice to pension scheme trustees**

This document is used to notify the trustees of any relevant pension scheme, or schemes, in respect of which the applicant is applying for a court order to change the manner in which future benefits are to be paid out. See Notice to trustees of pension scheme.

#### **M. Previous court orders**

If either party has previously applied to the courts for any orders relating to the marriage or family, including an application for a decree of judicial separation, then any orders previously made by the courts must also be attached to the Family law civil bill when it is filed at the relevant Circuit Court office.

#### **Filing of the documents with court**

All of these documents must be filed with the relevant Circuit Court office. Given that this is a divorce by consent it is possible that all of these documents can be filed at the same time with the relevant Circuit Court office.

### **THE STEPS IN A CONTESTED DIVORCE**

The following are the steps to be taken by the applicant and respondent where the divorce is contested, i.e. there is no agreement between the two parties on the terms of the divorce.

#### **Choice of court venue**

The applicant needs to identify the appropriate court venue to which he or she will make their application. The applicant or the respondent must reside, or work, within the jurisdiction, i.e. the geographic area, of the Circuit Court where this application is to be filed. There are eight court circuits – Dublin, Cork and six others which in turn cover a number of counties.

#### **Overview of the process**

The following are the main steps to be taken in applying for a contested divorce:

- The applicant files the application with the court.
- The applicant gives (serves) a copy of the application to the respondent.
- The applicant confirms that a copy of the application was provided to the respondent.
- The respondent confirms that he/she received the application.

- The respondent files a defence and counterclaim with the court and gives a copy to the applicant.
- If there are dependent children, a statement relating to their care etc. is prepared.
- Both parties confirm that they have considered other alternatives to a divorce.
- Both parties disclose their financial status.
- Any queries in relation to the financial information provided are resolved.
- The courts service attempts to resolve as many outstanding issues as possible.
- If agreement is reached, terms of settlement are drafted and a date is set for the court to hear and rule on the agreement.
- If there is no agreement a court date is set for a contested hearing and judgment.

## Documents required from the applicant

### A. The Family law civil bill

As previously stated the Family law civil bill is basically an application form. It contains two sections – the 'Indorsement of claim' and the 'Applicants claim'.

The indorsement of claim is where the applicant sets out the details of the marriage as he or she knows them.

The applicant's claim section is used to list any orders, including 'ancillary reliefs', which the applicant wishes to apply for to the court. Ancillary reliefs are court orders relating to the financial affairs of the parties.

These orders typically relate to some or all of the following: maintenance, the family home, other property and assets, custody, succession rights, personal safety and the safety of children, and pensions. Where a divorce is contested the court will decide the specific details of each order it decides to grant.

### B. Confirmation that the applicant has informed their spouse

The court will require formal confirmation that the applicant has informed their spouse of their application for divorce. This is done by completing an Endorsement and statutory declaration of service. This document must be signed in the presence of a commissioner for oaths or a practicing solicitor. Most solicitors' firms offer this service and charge around €10.

### C. The financial position of the applicant

The applicant is required to an Affidavit of means.

Basically this document sets out their financial position, i.e. assets, liabilities, income and pensions, if any. It also asks for details of their day-to-day living expenses.

Given that a key role of the court is to ensure that all parties – the spouses and any dependent children – will be properly catered for financially this document is key to providing the court with a complete picture of your financial situation.

Because this document is an 'affidavit' it needs to be signed in the presence of a commissioner for oaths or a practicing solicitor. Most legal firms provide this service for c. €10.

### D. Confirmation that alternatives to divorce have been considered

Both parties must provide a certificate, signed by the parties or by their solicitor if legally represented.

This short document essentially confirms that you are aware of the alternatives to applying for divorce, e.g. mediation, separation etc. See Certificate for a divorce.

### Possible other documents required from the applicant

#### **E. The welfare of children**

If there are children of the marriage the applicant needs to complete an Affidavit of welfare. This document requires details about the care and health etc. of the children. Children, for this purpose, are defined as any born to or adopted by either spouse. It also includes children to whom either party is in loco parentis to.

Because this document is also an affidavit it needs to be signed in the presence of a commissioner for oaths or a practising solicitor. Most legal firms provide this service for c. €10.

#### **F. Notice to trustees of pension scheme**

This document is used to notify the trustees of any relevant pension scheme, or schemes, in respect of which the applicant is applying for a court order to change the manner in which future scheme benefits are to be paid out, that such an application is being made. See Notice to trustees.

#### **G. Separation agreement**

If the parties have previously separated it is possible that a Separation agreement (also called a 'Deed of separation') was drafted and agreed at that time. If there is such a document it must be filed in the court by the applicant with their Family law civil bill.

#### **H. Previous court orders**

If either party previously applied to the courts for any orders relating to the marriage or family, including an application for a decree of judicial separation, then any orders previously made by the courts must also be attached to the Family law civil bill when it is filed at the relevant Circuit Court office.

### Filing of documents by the applicant

Once the Family law civil bill is drafted and signed it must be 'issued' by the relevant Circuit Court office. To issue the bill the office stamps, dates and allocates a reference number (the record number) to it.

Any previously agreed separation agreement and/or court orders granted must also be attached.

The applicant should bring three copies of the family law civil bill to the Circuit Court office - one to be kept on file at the court, one for your records and one to be served on the respondent. Two stamped copies are returned to the applicant and the original signed versions is retained by the court office.

The applicant then serves the issued Family law civil bill on the respondent.

### Documents required from the respondent

#### **A. Entry of an appearance**

This is a very short document confirming that the respondent has received the family law civil bill and is thus fully aware of the divorce application. See Entry of appearance for a divorce.

## **B. Defence and counterclaim**

The respondent replies to the family law civil bill by preparing a Defence and counterclaim. It essentially contains three sections – the 'Defence', the 'Counterclaim' and the 'Respondent's claim'.

In the first section called the defence, the respondent, if he/she wishes, can challenge the claims made by the applicant in the indorsement of claim section of the applicant's Family law civil bill.

The counterclaim section is where the respondent sets out the details of the marriage as he or she knows them.

The respondent's claim section is used to list any orders, including 'ancillary reliefs', which the respondent wishes to apply for to the court. Ancillary reliefs are court orders relating to the financial affairs of the parties.

These orders typically relate to some or all of the following: maintenance, the family home, other property and assets, custody, succession rights, personal safety and the safety of children, and pensions. Where a divorce is contested the court will decide the specific details of each order it decides to grant.

## **C. The financial position of the respondent**

The respondent is required to provide an Affidavit of means. Basically this document sets out the respondent's financial position, i.e. assets, liabilities, income and pensions, if any. It also asks for details of their day-to-day living expenses.

Given that a key role of the court is to ensure that all parties – the spouses and any dependent children – will be properly catered for financially this document is key to providing the court with a complete picture of the respondent's financial situation.

Because this document is an 'affidavit' it must be signed in the presence of a commissioner for oaths or a practicing solicitor. Most legal firms provide this service for c. €10.

## **D. Confirmation that alternatives to divorce have been considered**

Both parties must provide this short certificate, signed by the parties or by their solicitor if legally represented. This short document essentially confirms that the respondent is aware of the alternatives to applying for divorce, e.g. mediation, separation etc. See Certificate for a divorce.

## **Possible other documents required from the respondent**

### **E. The welfare of children**

If there are children of the marriage the respondent must complete an Affidavit of welfare. This document requires details about the care and health etc. of the children. Children, for this purpose, are defined as any born to or adopted by either spouse. It also includes children to whom either party is in loco parentis to.

If the respondent agrees with content of the applicant's affidavit then there is no need for the respondent to also provide the same detail – their affidavit can simply refer to the applicant's version and confirm their agreement with its contents.



Because this document is an 'affidavit' it needs to be signed in the presence of a commissioner for oaths or a practising solicitor. Most legal firms provide this service for c. €10.

#### **F. Notice to trustees of pension scheme**

This document is used to notify the trustees of the relevant pension scheme, or schemes, in respect of which the respondent is applying for a court order to change the manner in which the scheme benefits are to be paid out, that such an application is being made. See Notice to trustees.

#### **Filing of documents by the respondent**

The respondent must file their Entry of appearance with the relevant Circuit Court office within ten days of receiving the Family law civil bill. If respondent intends to defend the matter they must then file their Defence and counterclaim, ideally along with all of the other documents mentioned above, within a further ten days. Their affidavit of means and defence and counterclaim can, however, be filed with their appearance if it is to-hand.

If time is an issue it is possible for the respondent to be given more time if this is agreed with the other spouse or else allowed by the court.

#### **Case progression**

Once the respondent has filed all of their documents a process called 'case progression' begins. This is an arrangement whereby the courts service attempts to resolve as much of the outstanding issues as possible before the matter goes to a hearing (or is possibly resolved in its entirety).

The case will be listed, not later than 70 days after the date the Defence and counterclaim is filed, for a case progression hearing before the County Registrar.

The purpose of case progression is to reduce delay and cost and ensure that the time and other resources of the court are employed most effectively. Once this process is complete, the matter will be listed for hearing, or ruling in the event of eventual agreement, before a judge.

#### **Discovery**

The court rules allow either party to ask the other to 'vouch', i.e. prove the accuracy of, any or all items listed in their Affidavit of means. In a contested case, where there may not be a high degree of trust, it is not unusual for either side to make such requests of each other. Further progress in resolving the case must generally wait until both sides are satisfied with the responses they have received – however, the degree and depth of investigation embarked upon must also be 'reasonable' relative to the requirements of the case.

#### **Final steps**

A contested case is finally resolved either through agreement, i.e. it is settled out of court, or a contested court hearing. These two possible scenarios are explained below:

#### **Settlement out of court**

Where both parties were in disagreement at the outset of proceedings but eventually come to an agreement a Consent orders and settlement terms document can be used to document the terms agreed and specifically the orders that both parties agree to apply for to the court – referred to as

asking the court to rule on the agreement.

In doing so the agreement is made a rule of court which means that either party can seek a contempt of court ruling should the other fail to honour it thus making it more likely that the agreement will be executed as agreed. This remedy would not be available to the parties otherwise.

Where the parties are in such agreement, and thus an application for divorce is being made by consent, the applicant can apply for a date to be set for the court to so rule on their agreement. The document used to make this application is the Motion to rule.

If the court is satisfied that the relevant conditions have been met, including provision for any dependents and the respective spouses in the agreement, it should grant the decree and also make the agreement a rule of court.

### **Contested ("Full") hearing**

If the parties remain in disagreement with no prospective of a resolution, the applicant can apply for a trial date to be set so that the court can consider and judge on the matter.

[www.mjoc.ie](http://www.mjoc.ie)

Ormonde House, 26  
Harbour Row, Cobh,  
Co. Cork P24 HE97

tel: +353 21 4813944  
fax: +353 51 355667  
email: [cobh@mjoc.ie](mailto:cobh@mjoc.ie)

Drinagh  
Wexford

tel: + 353 (0)53 91 22555  
fax: + 353 (0)53 91 24365  
email: [info@mjoc.ie](mailto:info@mjoc.ie)  
DX 851 006 Drinagh