

DIVORCE

Leaflet No. 4



LEGAL AID BOARD

1890 615200
info@legalaidboard.ie
www.legalaidboard.ie

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This leaflet is not an interpretation of the law.

How do I obtain a divorce?

If you wish to end an existing legal marriage, you must apply to court (the Circuit Court or High Court) for an order for divorce. It is possible to agree the terms of a divorce between a husband and wife, however the Court must grant the divorce.

What advice will a solicitor give me?

A solicitor will explain the process of seeking a divorce and what other orders a court might make when it is granting a divorce. A solicitor is also obliged to advise you of:

- counselling services that may be able to help bring about a reconciliation between you and your spouse;
- mediation services that may be able to help you and your spouse negotiate and agree the terms of a divorce; and
- the possibility of negotiating a separation agreement instead of getting a divorce.

On what grounds would a court grant a divorce?

A court will grant a divorce if:

- you have lived apart for a period or periods of at least four years during the previous five years;
- there is no reasonable prospect of a reconciliation between you and your spouse; and
- it is satisfied that proper provision has been, or will be, made for each spouse and any dependent children.

Do I need to be legally separated in order to get a divorce?

No. It is not necessary to obtain a legal separation in order to get a divorce.

Additional orders

In making an order for divorce, the court may also make additional orders in relation to matters such as:-

- **custody and access** arrangements in relation to dependent children;
- **financial provision** for the dependent spouse and children by means of maintenance to be paid at fixed intervals and/or lump sums;
- **exclusion** of a spouse from the family home by giving the other spouse the right to live in the family home, for life or for a fixed period;
- **barring** of a spouse from the family home by preventing that spouse from entering it and from using or threatening violence against the other spouse and/or their children. Alternatively without preventing a spouse from entering the family home, the court may make a safety order stopping a spouse from using or threatening violence against the other spouse or their children;
- **property** arrangements in relation to the family home and/or other family property for the benefit of either spouse and/or dependent children, for example:
 - giving one spouse the right to live in it for life or for a fixed period;
 - ordering the sale of the property subject to conditions; or
 - placing property in joint names or in the sole name of one of the spouses; or

- **financial compensation** providing for the future financial security of a spouse through insurance policies and requiring either spouse to:
 - take out a life insurance policy for the benefit of the applying spouse or dependent child; and/or
 - assign the benefit of an existing insurance policy to the applying spouse; and/or
 - pay the premiums on a policy;
- **inheritance/succession** rights of each spouse against the other. After a divorce the parties are no longer spouses of each other and thus do not have spouse's normal inheritance rights. However, there are still certain cases where a former spouse may apply to court for a share out of the estate of his/her former spouse;
- **pension arrangements** changing the pension entitlement of either spouse. However, the court will only do this if proper provision has not been, or cannot be, made for the spouse and children through the making of other financial or property orders. A spouse can look for such an order either for his/her own benefit or for the benefit of a dependent child. Where a spouse benefits from the making of an order changing pension rights in judicial separation proceedings, the court may increase the benefit in later divorce proceedings;
- **emergency temporary** matters can be dealt with before the hearing of an application for a divorce, for example where one spouse is:
 - running up debts and endangering the family home or other property;
 - threatening to remove money from bank accounts or to spend or hide a redundancy/gratuity/compensation/damages payment that s/he is about to receive or has recently received; or
 - threatening to remove or sell household contents or other family assets.

Can I remarry or enter into a civil partnership after getting a divorce?

Yes. A decree of divorce gives you a right to remarry or enter into a civil partnership. If you remarry, you:

- cannot continue to claim maintenance for yourself from your former spouse; you can however, claim maintenance in respect of dependent children of the former marriage;
- cannot apply for any share of the estate of your former spouse when he or she dies; and
- cannot get a property adjustment order in your favour.

Can my foreign divorce be recognised in Ireland?

If you get a divorce outside Ireland, the divorce may be recognised in Ireland if it was obtained in a country where either spouse was domiciled.

Domicile is a complicated legal concept. In general terms, however, a person is domiciled in the country where s/he lives and intends to live permanently. It is possible to apply to court for a declaration as to the validity of a foreign divorce.

If a foreign divorce is valid, the divorced person:-

- is entitled to remarry;
- may be entitled to seek financial and property orders against his/her former spouse, provided that the divorced person applying for such orders has not remarried;
- may seek protection under the domestic violence legislation;
- is not entitled to inherit from the estate of his/her former spouse; and
- is not entitled to the protection given to spouses in respect of the family home.

Can I get a divorce if I'm in a civil partnership?

For civil partnerships, the equivalent to divorce is **dissolution of civil partnership**. A person whose civil partnership has been dissolved can enter into a new civil partnership or get married. The Court may dissolve a civil partnership where the civil partners have lived apart for a period of, or periods amounting to, two out of the past three years and where proper provision is made for each of them.

Head Office: Legal Aid Board, Quay Street, Cahirciveen, Co. Kerry.

Tel: (066) 947 1000

Fax: (066) 947 1035

Locall: 1890 615 200

Website: www.legalaidboard.ie