

July 2014



divorce



Divorce has been available in the Republic of Ireland since 1997.

Once a divorce is obtained, the parties (the ex-spouses) are free to remarry or enter into a civil partnership.

Family
Law
(Divorce)
Act 1996

Parties remain joint guardians of their minor children (under 18 years of age). Divorces are usually sought in the **Circuit Court (called Circuit Family Court when dealing with Family Law Cases)**; however, if the parties are very wealthy they usually apply to the High Court.

What do I have to do to get a divorce?

Divorce is a no-fault system. In other words, there doesn't have to be any misconduct on the part of one of the spouses in order for a divorce to be granted. However, you must meet certain conditions to obtain a divorce.

1. When divorce proceedings begin, the spouses must have lived apart for at least four of the previous five years.
2. There must be no reasonable prospect of reconciliation between the parties.
3. There must be proper provision for spouses and dependent family members.
4. Any other conditions that the court deems necessary or appropriate.

Once these conditions have been met, either spouse may apply to court for a decree of divorce. Once the court is satisfied that these conditions are fulfilled, a decree will be granted thereby dissolving the marriage.

Divorce proceedings can be either contested or uncontested, which means both spouses can agree to the divorce or one may object. Both spouses may agree what reliefs should be sought, which can be more cost-effective and may speed up the divorce process. On the other hand, they may have a difficult time agreeing how assets should be divided, what level of financial support should be agreed and with whom the children will reside.

When the court grants a decree of divorce, it can also make a number of ancillary or additional orders in relation to custody of children and access to them, the payment of maintenance and lump sums, the transfer or sale of the property, the extinguishment of succession rights, pension rights and other matters.

What effect does a Decree of Divorce have?

When a Decree of Divorce is obtained, the marriage is dissolved and the parties are no longer spouses, so they are free to remarry or enter into a civil partnership.

Ex-spouses lose their inheritance rights in relation to each other.

Succession
Act 1965

Some rights bestowed by marriage will survive the divorce. For example, parties are seen as spouses for the purposes of the Domestic Violence Act 1996, both remain guardians of their children, and former spouses are not deprived of a widow's/ widower's state pension.

Divorce can alter the rights of a former spouse to the family home.

A person may also have responsibilities to maintain (financially support) a former or ex-spouse even after divorce, until the dependent ex-spouse remarries. Any children aged under 18 (up to 23 if in full-time education) are also eligible for maintenance support. You should seek specific advice on this issue. (See also FLAC's leaflet on *Maintenance*)

Family
Home
Protection
Act 1976
as
amended
by the
Family
Law Act
1995

How do I go about getting a divorce?

The first step when seeking a divorce is to consult a solicitor. You can bring divorce proceedings on your own, but the legislation may be difficult to understand without a solicitor's help. If you cannot afford a

solicitor, you should apply for civil legal aid from the Legal Aid Board (see below).

It is possible to issue one's own divorce proceedings without legal assistance and the officials at the Circuit Family Court offices can provide assistance to lay litigants.

What documents will I need to bring to my solicitor?

- State marriage certificate
- Any previous court orders
- Any deed of separation or earlier agreement
- Details of any children of the marriage, including any special needs

A financial profile of husband and wife, to include:

- Employment status and income
- Mortgages, debts and other liabilities such as bank loans, overdrafts etc
- Properties held either jointly or separately
- Current maintenance and/or access arrangements (if any)
- A list of all other assets including cars, savings accounts, shares etc
- Details of Pensions/Insurance Policies
- Accounts and recent payslip and recent P60 form

- Receipts and expenses, to include weekly outgoings such as food shop and bills etc

What if my spouse and I need help to negotiate the divorce terms?

The law requires a solicitor to inform the couple of the possibilities of reconciliation, mediation and separation agreements and the option of judicial separation (See *Separation* leaflet for more information on this).

Mediation

Family Mediation is a process in which an impartial third person (the mediator) assists those involved in family breakdown to reach agreement regarding their children, finances and property.

Mediation is particularly useful where the parties have agreed to separate or divorce or where they have any issues relating to maintenance, custody, access or guardianship.

The courts favour mediation and judges will adjourn cases in some instances and suggest mediation before proceeding with the case in court.

The mediator should be accredited and professionally trained – his/ her job is to manage negotiations in an impartial way. Generally speaking mediation takes place over 3 to 6 sessions. The parties should obtain their

Family
Law
(Divorce)
Act 1996

own separate legal advice throughout the mediation process.

When agreement is reached, the mediator will draw up a written document usually referred to as a memorandum of understanding that sets out what the parties have agreed. The parties will each be advised by the mediator to get independent legal advice and the mediated agreement can then form the basis of the Deed of Separation or Decree of Judicial Separation/Divorce on consent terms.

Note: A mediated "agreement" of understanding is not a legal agreement until it is formalised by a Court Order.

The **Family Mediation Service** is a state-run, non-means tested and free service forming part of the Legal Aid Board. There can be a waiting time of a number of weeks/ months. Each party must contact the mediation service separately to book themselves in. There are currently 16 offices located around Ireland, some part-time and some full-time. For more information, check the website at www.legalaidboard.ie

Apart from the Family Mediation Service you can avail of mediation on a private basis where you pay by the hour. Some solicitors and barristers have qualified as mediators and there links on both the Law Society and Law

Library websites. However, mediators do not have to be lawyers and there are a number of mediation bodies.

Northside Community Law Centre (NCLC)

Tel: 01 848 2988 Web: www.nclc.ie *and*

Ballymun Community Law Centre (BCLC) –

Tel: 01 862 5805 Web: www.bclc.ie

both provide a free family mediation service.

Collaborative Law

This is an alternative method of resolution of family law disputes including separation and divorce. The process takes place outside a court setting.

You and your partner work with your own specially trained collaborative lawyers and try to resolve the various issues through face-to-face meetings. Once issues are agreed the lawyers can draft a binding agreement. If the process breaks down neither of the lawyers can act for you in any contested court proceedings.

The Legal Aid Board has published an information leaflet on Collaborative Practice which can be downloaded from their website.

What is the difference between Mediation and Collaborative Law?

There are a number of differences but the main one is that in Collaborative Law your

lawyer is at your side at all times during the process and if the process has been successful you have a legally binding agreement. In mediation the agreement reached between the parties is not legally binding. When the mediation has concluded the parties are advised by the mediator to go to their solicitors with the mediated agreement for legal advice. Mediation can be the first step to attaining a Legal Separation or Divorce.

Court procedure

All divorces must be granted by a court, whether they are on consent (when both parties agree) or where they are contested. If the parties are unable to resolve the issues between them, they can turn to the courts for a **determination of the terms of their divorce**.

The person who makes the application for a divorce is known as the **applicant** in court documents. Their spouse is known as the **respondent**, who is the person who must reply through the court to the divorce application.

When the Court grants a Decree of Divorce, it can make various ancillary orders in relation to various financial and property matters, including Orders relating to the family home, maintenance and pensions. When deciding to make any such Orders, the Court is obliged to try to ensure that proper provision is made for each spouse and for any dependent member of the family. In deciding

whether to make any such Orders, the Court will take into consideration the various factors set out in Section 20 of the Family Law (Divorce) Act 1996, which include the following:

- The income and capacity, property and other financial resources of the spouses;
- The financial needs, obligations and responsibilities of each of the spouses;
- The standard of living enjoyed by the family concerned before the proceedings were instituted or before the spouses separated;
- The age of each of the spouses and the length of time during which the spouses lived together;
- Any physical or mental disability of either of the spouses;
- The contribution which each of the spouses has made or is likely in the foreseeable future to make to the welfare of the family (including financial and non-financial contributions);
- Any income or benefits to which either of the spouses is entitled;
- The conduct of each of the spouses, if that conduct is such that in the opinion of the Court, it would in all circumstances of the case be unjust to disregard it (misconduct is only taken into consideration by the Court if the misconduct is considered to be

gross and obvious; in other words, the misconduct has to be of an extremely serious nature);

- The accommodation needs of either of the spouses;
- The value to each of the spouses of any benefit which by reason of the Decree of Judicial Separation that spouse will forfeit (such as a benefit under a pension scheme);
- The rights of any person other than the spouses.

The courts shall also have regard to the terms of any separation agreement which has been entered into by the spouses and is still in force.

What documents do I need to prepare for divorce?

To apply for a divorce in Ireland, four documents must be prepared and submitted to the office of the Circuit Family Court:

1. A **Family Law Civil Bill**. This document sets out details relating to you and your spouse, when and where you were married, what each of you do for a living, where each of you live, how long you have lived apart and the names and birthdates of your children (if any).

2. A sworn **Affidavit of Means** which is a document that lists your assets, income, debts and/ or liabilities, monthly outgoings and pension entitlements.
3. A sworn **Affidavit of Welfare** if there are any dependent children. This document sets out details of the children such as dates of birth, where and with whom they live, details regarding their education, health, childcare arrangements and any maintenance and access arrangements already in place.
4. A document that certifies you have been advised of the **alternatives to divorce**. This is signed by a solicitor, and certifies that you have discussed the possibilities of reconciliation, mediation and separation.

Copies of the relevant forms are available from your nearest Circuit Court Office. Some of these forms are also available on the Courts Service website: www.courts.ie under Court Forms > Schedule to the Circuit Court Rules > Schedule B – Forms.

The court rules that govern family law proceedings can also be viewed on the Courts Service website under: Court Rules > Circuit Court Rules > Index of Rules > Order 59.

What does the respondent need to do?

When the respondent is served with a Family Law Civil Bill, he/she should lodge an **Appearance**. This is a document that indicates to the Applicant and the Court that the respondent has been served with the proceedings. The respondent is then allowed some time to file (register papers with the court) his or her **Defence and Counterclaim, Affidavit of Means and Affidavit of Welfare**.

What happens after all the documents have been filed?

Once all documents are filed by the applicant and respondent, the **County Registrar** (a court official with powers similar but much more limited to those of a Judge) will convene a meeting (or meetings) with the people involved and their lawyers, if they choose to be represented. These meetings are called **case progression hearings**, and they happen in a court room though with much less formality than a court hearing. At these hearings the County Registrar will make sure that both sides identify the issues in dispute and are prepared for hearing. The County Registrar can also set a timetable within which preparations must be completed so that the case is run fairly and efficiently.

What happens at the hearing?

Once the case is ready for hearing, it will be listed before a judge who will hear both sides and ensure that the requirements of the Family Law (Divorce) Act 1996 have been met. If both parties agree at any time during this process to settle the case and reach agreement on the terms of their divorce, it can be very quickly brought before a judge who must be satisfied with the settlement agreed.

When a Decree of Divorce is granted, **Ancillary Orders** can be made by the Judge on issues such as:

- Maintenance
- Access to and custody of children
- Property adjustments
- Sale of property
- Extinguishing of succession rights
- Pensions
- Life Cover

Interim Orders

It may be quite some time (sometimes up to a year or longer) before a case comes up for hearing before a judge. In the meantime, and if matters are deemed urgent, either spouse is entitled to apply for **Interim Orders** which will remain in place until the full hearing. These orders can decide such matters as:

- The amount of maintenance (if any) to be paid pending a full hearing of the case;
- The custody and access arrangements of the children pending the full hearing of the case;
- Safety/Protection/Barring Orders pending the full hearing of the case;
- Freezing an asset, such as a lump sum termination payment from an employer.

Foreign Divorces

EU divorce:

A divorce obtained in any European Union country (except Denmark) will generally be automatically recognised and enforced in Ireland under the Brussels II bis Regulation without any special procedures.

Brussels II
bis
Regulation

Non-EU divorce:

A divorce granted by a **non-EU** court (and a Danish court) will only be recognised in Ireland where either of two conditions is satisfied:

Domicile &
Recognition
of Foreign
Divorces
Act 1986,
section 5

- One of the spouses must be domiciled in that court's jurisdiction at the time divorce proceedings are issued. It is not necessary for the spouse who initiated the proceedings to be domiciled in that jurisdiction, as long as the other one is.
- If the spouses obtain a divorce in a different country from where they are domiciled, but their domiciliary country (where they are living) recognises that divorce, Ireland will recognise it on this basis.

Exceptions to recognition of non-EU divorces are:

- divorces obtained by fraud;
- divorces obtained under duress;

- divorces obtained under any non-judicial process; or
- divorces obtained with some other denial of justice, to be adjudicated on by the Irish courts.

You should note that each state in the United States and each territory in Australia is treated as a separate jurisdiction for the purposes of recognising a foreign divorce.

What do I do if I have questions about a foreign divorce?

If you are in doubt, you can **apply to the Circuit or High Court to seek a declaration as to the validity or non-validity** of a non-EU foreign divorce. The Revenue Commissioners can also make such an application because it is often relevant when it comes to the question of inheritance tax.

Family
Law Act
1995,
section
29

It must be stressed that Irish law is not concerned about the foreign laws under which a marriage was formed or a divorce granted in deciding whether to recognise a foreign divorce. The courts here will only look at the issue of domicile.

Domicile

What does 'domicile' mean and why is it important?

The concept of 'domicile' is quite complicated legally as it does not just mean being habitually resident or just living in a country. Domicile is in large part about your intention to remain in a country permanently as opposed to the actual length of time you spend there.

At birth, you automatically get a 'domicile of origin' which is usually in your birth country, even if you may not get citizenship of that country at birth. However, if you move to a different country, even if you live there for many years, you will still retain your original domicile unless you can prove you intend to remain in the new country permanently.

Example: After getting married in Paris, James and Marie moved to Australia ten years ago to find work. They found jobs, set up home and had two children there and were happy for many years, although they always talked about going home to set up a business. However, three years ago, their relationship broke down and they divorced. James returned to Ireland the following year and recently met a new person whom he wishes to marry. However, when he presented his papers to the Registrar of Marriages, he was shocked to discover that Irish law did not recognise his foreign divorce.

Because he never had the intention of permanently remaining in Australia, he had never lost his Irish domicile of origin and therefore could not fulfil the conditions for recognition. He had to then apply for a divorce under Irish law, which meant he had to wait for another year to meet the four-year requirement.

The *in camera* rule

All cases in the Family Law Courts in Ireland are heard *in camera* (in private). Therefore, members of the general public are not permitted to enter the court. The *in-camera* rule has changed recently to allow the media to have limited access to family law hearings and to have limited rights to report on the proceedings.

Legal Aid

You may be eligible for legal aid if you are a person of moderate means. To qualify for legal aid in civil cases your disposable income and assets must be below a certain limit, there must be merit to the case and there must be no other satisfactory way of resolving the problem. After approval, the Legal Aid Board provides you with the services of a solicitor and, if necessary, a barrister. You can apply for legal aid for more than one matter at a time. The Board's offices are called Law Centres and are located around the country. For the location of your nearest Law Centre, call 1890 615 200.

All those who are granted legal advice and/or legal aid must pay a fee called a contribution to the Board. The minimum contribution is €30 for legal advice and €130 for legal aid. Law centre staff will advise what a person's actual contribution will be as each person is assessed on an individual basis.

Before you qualify for legal aid, you must first satisfy a means test. Your disposable income must be less than €18,000 and your disposable capital cannot be more than €100,000.

If you are in receipt of allowances, they will be taken into account and they are deductible when calculating disposable income. The **maximum allowance** on childcare facilities if you are working is €6,000 per child per year and the maximum allowance on accommodation costs (e.g. rent) is €8,000 per year. The

Public Service Pension Related Levy and the Universal Social Charge are now also considered and are deductible for the purposes of assessment.

The value of an applicant's home and its normal contents are excluded when assessing the value of his/her capital resources (property). If your capital resources exceed €4,000, you must complete a Statement of Capital.

For further details on financial eligibility requirements or for details of other allowances, **contact your local Law Centre**. A full list is available at www.legalaidboard.ie. FLAC has prepared a guide to the state legal aid system which you can download at bit.ly/CLAflacsheet.

Need more information?

Legal information leaflets are also available from FLAC on a variety of other areas of law. They are free to download as PDFs from the FLAC website or in print from your local FLAC centre or Citizens Information Centre.

FLAC Mission Statement

FLAC (Free Legal Advice Centres) is a human rights organisation which exists to promote equal access to justice for all.

While every effort has been made to ensure the accuracy of this leaflet, it is provided for general legal information only and is not intended as a substitute for legal advice. The information it contains is correct as of date of publication. FLAC does not accept any legal liability for the contents of this leaflet. People with specific legal problems should consult a solicitor.

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FLAC offers free, confidential basic legal information via its lo-call telephone information line at 1890 350 250 and one-to-one legal advice through its network of voluntary advice centres countrywide – www.flac.ie/help



promoting access to justice

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