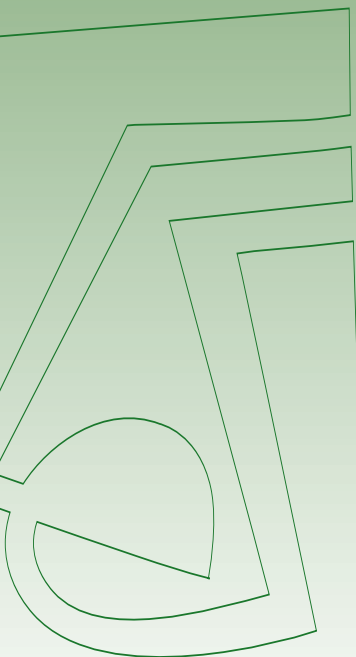


# divorce



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Divorce has been available in the Republic of Ireland since 27 February 1997.

Once a divorce is obtained, the parties (the ex-spouses) are free to remarry.

Parties remain joint guardians of their minor children (under 18 years of age). Divorces are usually sought in the **Circuit Court**, however, if the parties are very wealthy they might apply to the High Court.

### **Conditions that must exist in order to obtain a divorce:**

- 1** When the proceedings begin, the spouses have lived apart for at least four of the previous five years.
- 2** There is no reasonable prospect of reconciliation.
- 3** There is proper provision for spouses and dependent family members.

Additionally, one spouse must be domiciled in the Republic of Ireland (this means having residence in Ireland with the intention of living here permanently) **or** have lived in the country for one year before bringing proceedings.

Once these conditions have been met, either party to the marriage may apply to court for a decree of divorce, and once the court is satisfied that these conditions are fulfilled a decree will be granted, thereby dissolving the marriage. When the court grants a decree of divorce it also makes a number of ancillary orders (see below).

### **Effect of a Decree of Divorce:**

- The marriage is dissolved and the parties are no longer spouses, so they are free to remarry.
- Spouses lose their Succession Act (inheritance) rights in relation to each other.
- **Some rights survive** including: parties remain spouses for the purposes of the Domestic Violence Act, both spouses remain guardians of their children, and spouses are not deprived of a widow's/widower's pension.
- While a couple remain married the Family Home Protection Act 1976 is relevant even when the home is held in the name of one spouse only. Any sale, loan against or mortgage of the property will, under this law, require the formal consent of **both** the spouses. So even where the property is not in their joint names, one spouse cannot dispose of the family home or borrow against it without the proper consent of the other. Divorce is likely to affect the ownership of the family home and to alter the rights of a spouse under the Family Home Protection Act 1976.

## Divorce Procedure:

The first step when seeking a divorce is to consult a solicitor. A person can bring the action in their own right but the legislation is difficult to understand without the aid of a solicitor. If a person cannot afford a solicitor then they should apply for legal aid from the Legal Aid Board (see below).

When you decide to seek advice from a solicitor it is useful to bring along the following documentation:

- Marriage certificate
- Any previous court orders
- Any deed of separation or earlier agreement
- Details, if any, of child with special needs
- A financial profile of husband and wife including:
  - u Employment status and income
  - u Mortgages or debts
  - u Properties
  - u Current maintenance arrangements (if any)
  - u Other assets
  - u Pensions/insurance policies
  - u Accounts and payslips
  - u Receipts and expenses

The Family Law (Divorce) Act 1996 requires a solicitor to inform the couple of the other possibilities of reconciliation, mediation and separation agreements and judicial separation (See *Separation* leaflet for more information).

**Collaborative practice** is a new way of working out an agreement between a couple whose marriage has broken down. At the outset the spouses and their respective lawyers commit themselves not to go to court or threaten to do so for the duration of the collaborative process.

Both parties must also undertake to be completely honest and open about all matters and to make full and frank disclosure of all their assets. Talks between the parties and their lawyers are face-to-face and parties must accept that the aim of the process is to reach an agreement that is fair to everyone.

The hope is that a couple will sort out a workable agreement that is more effective and less stressful than the court process or the decisions which can be imposed on a couple by a court. The agreement must be approved by a court at the end of the process.

Both spouses each work with a specially trained collaborative lawyer who provides legal advice and guidance. These two lawyers cannot act for either spouse in any later court proceedings if the collaborative process does not work out. If you are in receipt of Legal Aid for the purposes of reaching a collaborative practice agreement and this breaks down, the Legal Aid Board will arrange alternative legal representation for court proceedings.

## Court Procedure:

Where 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**. All divorces must be granted by a court.

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

## To apply for a divorce in Ireland four documents must be submitted to the Circuit Court:

- 1** An application form (known as a **Family Law Civil Bill**). This describes you and your spouse, what you do for a living, where you live, when you were married, how long you have lived apart and the names and birthdates of your children (if any).
- 2** A sworn **statement of means** including: assets, income, debts or liabilities and outgoings.
- 3** A sworn statement regarding the **welfare of any children**. This sets out the child's background including where and with whom they live, 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](http://www.courts.ie) under Rules and Fees > Circuit Court Schedules > Schedule B – Forms.

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

### **The part of the respondent:**

- The respondent lodges an appearance, i.e. to indicate that he/she intends to defend the action.
- The respondent is allowed further time to file (register papers with the court) his or her defence.

Once all documents are filed by the applicant and respondent, or earlier if both parties agree, the County Registrar, a Court official with powers similar to those of a Judge, will convene a series of meetings, called Case Progression Hearings, with the people involved and their lawyers. At these Case Progression 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. 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 are met. If both parties agree at any time during this process to settle the case, then it can be very quickly brought before a Judge who must be satisfied with the settlement agreed.

## Interim Orders

A person may have to wait for a considerable amount of time (sometimes up to a year) before their case comes for hearing before a judge. In the meantime, either spouse is entitled to apply for an **Interim Order** which will remain in place until the full hearing. These orders can arrange such matters as:

- Maintenance
- Custody of children
- Safety/Barring orders
- The entitlement of one spouse to sole occupancy of the family home

## The *in camera* rule

All cases in the Family Law Courts are heard *in camera* (in private). Therefore, members of the general public are not permitted to enter the court. However, new rules of court allows a qualified practitioner to compile a record of selected family court proceedings (minus any references to the identity or address of any family members, so parties remain anonymous) which can sometimes be reported to the public.

## 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 more satisfactory way of resolving the problem. After approval, the Legal Aid Board provides you with the services of a solicitor and, where 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, LoCall 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 €10 for legal advice and €50 for legal aid. The law centre staff will advise a person of the actual contribution in each individual case.

As of 1 September 2006 the new **disposable income** limit of a person applying for legal aid has been increased from €13,000 up to €18,000 per year.

The **maximum allowance** (this is an expense which the rules allow you to deduct when calculating your disposable income) on childcare facilities if you are working is €6,000 per child per year. The maximum allowance on accommodation costs (e.g. rent) is now €8,000 per year.

The value of an applicant's home and its normal contents are excluded when assessing the value of his/her capital resources (property), as are the value of the tools of an applicant's trade.

For details of other allowances, contact the Legal Aid Board or your local Law Centre.  
Website: [www.legalaidboard.ie](http://www.legalaidboard.ie)

**Legal information is also available on the following topics in this series:**

**separation**

**maintenance**

**cohabiting**

**domestic violence**

**divorce**

**family law and children**

**change of name by deed pole**

**enduring power of attorney**

**probate**

**wills and intestacy**

**the small claims court**

**working hours**

**unfair dismissals**

**maternity leave**

## FLAC Mission Statement:

FLAC is an independent human rights organisation dedicated to the realisation of equal access to justice for all. It campaigns through advocacy, strategic litigation and authoritative analysis for the eradication of social and economic exclusion.

*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. FLAC does not accept any legal liability for the contents of this leaflet. Persons with specific legal problems should consult a solicitor.*

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### **Free Legal Advice Centres**

13 Lower Dorset Street  
Dublin 1

**LoCall:** 1890 350 250

**Tel:** 01 874 5690

**Email:** [info@flac.ie](mailto:info@flac.ie)

**Website:** [www.flac.ie](http://www.flac.ie)