

# separation



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There are two different ways for married couples to separate:

- 1 Separation agreement
- 2 Judicial separation

### **Options for negotiated agreements before going to court**

**Mediation agreement:** Mediation is a service to help couples to negotiate the terms of their own separation agreement in an atmosphere of co-operation. A professionally trained mediator will try to assist the couple in reaching their own agreement. The aim for the mediator is to help couples deal with emotional and difficult issues that can often prevent an agreement being reached.

Both parties attend meetings, discussions are confidential and the mediator does not take sides. Concerns such as parenting of children, financial support, the family home and property are discussed.

For an appointment both parties must contact the Family Mediation Service independently and confirm that they are willing to attend.

At the end of the session the couple will ideally have a mediated agreement which can be used as the basis for a legal separation agreement drawn up by a solicitor.

A mediation service is not a legal service; independent legal and financial advice should be obtained before attending mediation or during it so that each person is aware of their rights and is able to make informed decisions.

Mediation normally takes up to six sessions. Mediation in the Family Mediation Service is free of charge. Contact:

Family Mediation Service  
Floor 1  
St Stephens Green House  
Earlsfort Terrace  
Dublin 2  
Tel: 01-634 4320  
Online info: [www.fsa.ie](http://www.fsa.ie)

**Collaborative practice:** This is a new type of process for reaching agreement in separation situations. At the outset husband and wife 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 separating couple by a court.

Husband and wife each work with a specially trained collaborative lawyer who provides legal advice and guidance. Neither lawyer can act for husband or wife 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.

### Separation Agreement

A separation agreement is a legally binding written contract between spouses, known as a Deed of Separation, setting out their future rights and duties.

The effect of the agreement is that it is legally enforceable. The courts have the power to make the agreement **a rule of court** where the parties apply to the court. This means that all of the agreed terms (where covered by appropriate legislation) can afterwards be legally enforced by application to the court.

Unlike mediation, each party must have their own solicitor to ensure they receive independent legal advice when the agreement is being set out.

The agreement does not give the right to remarry. If it operates successfully it can later form the basis of a divorce application. The agreement will include a number of terms, including:

- Agreement to live apart
- Arrangements regarding children
- Amount of maintenance to be paid
- Arrangements regarding the family home/ property
- Any other agreements between the spouses, such as a non-molestation clause.
- Adjustment of inheritance rights

A separation agreement does not usually go into pension rights and generally it is necessary to get a court order for this. This is because trustees of pension schemes are not obliged to honour a separation agreement term that alters pension rights.

Completion of this deed depends on both spouses agreeing to **all** of its terms. The parties and/or their solicitors can continue to negotiate until agreement is reached.

### Judicial Separation

A decree of judicial separation relieves spouses of their duty to cohabit. A couple may **not** seek a judicial separation when they already have a separation agreement which has been made an order of court in force. A judicial separation is where a judge decides the issues on which a separating couple cannot reach agreement. In cases where spouses cannot agree upon the terms of an agreement, a decree of judicial separation can be granted by the court under the Judicial Separation and Family Law Reform Act 1989 and the Family Law Act 1995.

To apply for a judicial separation, one of the following six grounds **must** be present:

- 1 One spouse has committed adultery.
- 2 One spouse has behaved in such a way that it would be unreasonable to expect the other spouse to continue to live with that spouse.
- 3 One spouse has deserted the other for at least one year at the time of the application for a separation.
- 4 The spouses have lived apart from one another for one year up to the time of the application for separation and both spouses agree to the separation decree being granted.
- 5 The spouses have lived apart for at least three years up to the time of the application for a separation (this applies whether or not one of the spouses agrees to the separation).
- 6 The court has decided that a normal marital relationship has not existed between the spouses for at least one year before the date of application for separation.

The most frequent reason given to the Court is ground 4. This has the benefit of not placing the blame on one party more than on the other.

An application is made to the Circuit Court, normally through a solicitor, and the same solicitor cannot act for both parties.

You are allowed to represent yourself in court

– no one is legally required to have a solicitor  
– but it is advisable to be represented by one as there are many complex matters. If you cannot afford a solicitor then you should apply for legal aid and, if granted, a solicitor will be appointed to represent you.

The solicitor will discuss whether any of the grounds for separation exist and will then advise you with regard to counselling or mediation services available to couples. The solicitor will also discuss the possibility of a separation agreement or a collaborative practice agreement (see above).

**To apply for Judicial Separation four documents must be filed in the Circuit Court:**

- 1** An application form (known as a Family Law Civil Bill), which sets out details of you and your spouse: your occupation, where you live, when you married, how long you have lived apart, the names and birthdates of any children and a brief outline of a request for various court orders.
- 2** A sworn statement of means, which lists your assets, income, debts, liabilities and outgoings.
- 3** A sworn statement regarding the welfare of any children. This describes where and with whom they live, their education and schools, health, childcare arrangements and any maintenance and access arrangements already in place.
- 4** A document that certifies that you have

been advised of the alternatives to judicial separation. This is signed by a solicitor and states that you have been advised of the options of reconciliation, mediation and separation agreements.

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.

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.

Once the court has granted a decree of judicial separation, **spouses are no longer obliged to live together**. They are still considered husband and wife but they are 'estranged'.

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 loan against or sale 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 without the proper consent of the other.

**Ancillary Orders** can also be made to settle matters like financial arrangements, access to and custody of children, or to alter a spouse's rights and obligations in relation to things such as succession (inheritance) rights.

**Interim Orders** are available to parties seeking a judicial separation. These are orders that will be in place up until the hearing of the application. As there can be long delays in getting the full case heard in the Circuit Court, these orders are important. They can include:

- A Protection Order
- An Interim Barring Order
- A Child Custody Order
- A Maintenance Order
- An Order to preserve the family home, its contents, or other assets.

If it becomes clear at a later stage that significant information was deliberately

withheld by either party then any order can be adjusted if the court is satisfied it would be fair in the circumstances to do so. (See *Domestic Violence, Family Law and Children and Maintenance* leaflets for more information).

The cost of separation for these procedures can be high depending on a number of things including the line taken by both parties, any expert evidence needed and whether the case goes to court. You are entitled to get as accurate an estimate as possible of the costs involved from your solicitor.

### **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)

## 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.

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Citizens **Information** Board



### **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)