



FAMILY LAW

In Ireland



GA **GREEN**
& ASSOCIATES

DIVORCE

► What Is Divorce?

Divorce is an official termination of a legal marriage and is governed by the Family Law (Divorce) Act 1996. Divorce allows for parties involved to remarry. A divorce is final and cannot be taken back but parties can have orders reviewed by the courts.

► What Do I Need To Get A Divorce?

For divorce to be granted, there must be proper provision for spouses and kids, no chance of reconciliation, spouses must have lived apart for at least 2 out of 3 years and either spouse must reside in Ireland. According to s.6(2) of the 1996 act, solicitors should advise clients that if there is a chance of reconciliation between parties, the divorce process may be a waste of time and money. Thus, if there is a chance of reconciliation your solicitor can give you information on mediation and other options. The 1996 act imposes a mandatory requirement of proper provisions for spouses and children. This means that the courts can impose ancillary or preliminary orders regarding custody of children, maintenance, property and more.

► What are Ancillary Orders?

Ancillary orders are known as financial matters arising from marital breakdown. These orders can be imposed on either spouse during their lifetime. For instance, periodical payment, maintenance and secured periodical payment orders.



► What are Periodical Payments Orders?

They are similar to maintenance orders and are generally paid monthly depending on the facts of your case. s.13(1) of the 1996 act states judges can (a) order spouse to give money to the other spouse for a specific duration (b) order spouse to give money to the other spouse regarding any dependent child for a specific duration.

► What are Secured Periodical Payment order

This order can be granted when your spouse is not making required payments. If a judge sees that a spouse has a reasonable amount of assets, and it is clear that the spouse is not providing for financially, they could impose a secured periodical payment order. Thus, this will give the other spouse a sense of security knowing they will have payment secured. S. 3(1) of the 1996 act states that (a) either spouse is to give money to the other in a secured way (b) spouses can be ordered to give secure payments to a person regarding a dependant child.



► What are Maintenance orders?

Section 13(1) of the 1996 act states that (a) a judge has the power to give a lump sum order to a spouse if there were additional expenses before maintenance was applied for. (b) a judge has the power to give a lump sum order to a spouse if there were additional expenses that before maintenance was applied for regarding dependant children.

► What are Preliminary Orders?

Section 11 of the 1996 act states parties can be granted preliminary orders in court before their divorce is granted. The type of orders a judge can grant are:

1. Family related orders e.g., custody orders and maintenance orders.
2. Domestic violence orders e.g., safety, barring, protection, and temporary orders.
3. Protection of the family home e.g. property adjustment orders.
4. Protection of the contents in the home and pension adjustment orders

FACT:

The Central Statistics office stated that the number of people being granted a divorce and judicial separation increased by 8.9 per cent between 2011 and 2016 rising from 203,964 to 222,073.

SEPARATION AGREEMENT

► What Is A Separation Agreement?

A separation agreement sets out terms and conditions that are reached by the parties themselves. This agreement must be in writing.

► What Is Involved In A Separation Agreement?

The type of content involves custody, access, and other personal assets. If terms are not agreed on, a mediation or negotiation session can be organised with a solicitor to assist you with your separation agreement. By having a separation agreement in place, it reduces stress, additional strain on spousal relationships and saves time by avoiding the long duration of court proceedings.





JUDICIAL SEPERATION

▸ What Is Judicial Separation?

A decree of Judicial separation is a court order that is granted to an applicant. It is governed by the Judicial Separation & Family Law Reform Act 1989. If you are judicial separated, you are recognised to be separated but remain legally married. These are only granted provided the welfare of dependent children are taken care of.

▸ What Are The Grounds For Judicial Separation?

The grounds for JS are adultery, unreasonable behaviour, desertion of the family home, a normal martial relationship has not existed for at least 1 year, parties agreed to live apart for at least a year and parties have lived apart for at least 3 years.

▸ Adultery:

This ground can be difficult to prove unless you have proof that adultery occurred. Section 40 of the *Judicial Separation & Family Law Reform Act 1989* states if one partner commits adultery, and the other party is aware, and continues to live with them then you cannot rely on this ground. This is only if the married couple were living together for at least 1 year or more.

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► Unreasonable Behaviour

Section 2(b) of the *Judicial Separation & Family Law Reform Act 1989* it states "that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent". In other words, either spouse being mentally or physically abusive which makes it impossible to live with their spouse.

► Desertion

Section 2(b) of the *Judicial Separation & Family Law Reform Act 1989* it states "that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent". In other words, either spouse being mentally or physically abusive which makes it impossible to live with their spouse.

► Parties Must Have Agreed Lived Apart For 1 Year Up To The Date Of The Application

Section 2 (d) of the *Judicial Separation & Family Law Reform act 1989* states "that the spouses have lived apart from one another for a continuous period of at least one year immediately preceding the date of the application and the respondent consents to a decree being granted" In other words, both parties separate and agree to live apart for a duration of a year and parties consent to a decree of judicial separation being given. The reasons for your spilt aren't accounted for under this ground.

► A Normal Marital Relationship Hasn't Existed For 1 Year

Section 2 (f) of the *Judicial Separation & Family Law Reform act 1989* states "That if a marriage has broken down to the extent that the court is satisfied in all the circumstances that a normal marital relationship has not existed between the spouses for a period of at least one year immediately preceding the date of the application". In other words, your marital relationship hasn't existed for at least 1 year. A normal marital relationship is defined as two spouses residing together and having loyalty and love towards each other.



▶ The Parties Have Lived Apart For 3 Years At The Time Of The Application Without Consent Of The Other Party

Section 2(e) of the Judicial Separation & Family Law Reform act 1989 it states "that the spouses have lived apart from one another for a continuous period of at least three years immediately preceding the date of the application" 'This means that partners must live apart for a consistent period of 3 years after the JS application begins.

GUARDIANSHIP



▶ What Is Guardianship?

A guardian has a legal right and a duty of care over a child. S.6 of the Guardianship of infants act 1964 to provide the child with a healthy home, education, and the general welfare of the child this includes providing maintenance.

▶ Who Has Guardianship Over A Child?

Upon, birth, mothers have automatic guardianship rights in contrast to fathers where it is not automatic. An application for guardianship can be made by someone other than a parent if they provide for the child, civil partners, co-habitants, grandparents, or someone who shares responsibility for the child.

what is GUARDIANSHIP

Gives an individual the authority to decide on matters relating to the physical and mental well-being of a person.

Duties include:



Deciding where the person will live



Caring for clothing, furniture, vehicles, etc.



Consenting or withholding consent to medical care



Providing care, comfort and overall well-being for the individual

► As A Father, How Can I Get Guardianship Of My Child?

Fathers can gain guardianship rights by either signing a statutory declaration with the mothers consent, being appointed guardian by the District Court, marrying the child's mother, complying with a cohabitation period or by will.

► What Is Temporary Guardianship?

Temporary guardianship can be granted if a guardian cannot comply with their responsibilities towards the child