

WHEN 'HAPPY EVER AFTER' ISN'T SO HAPPY AFTER ALL



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With the number of couples separating and divorcing in Ireland on the increase, it is important that you know the options available to you should your marriage breakdown.

Although this is a very stressful time for both parties involved, it is important to keep matters as civil as possible not only for the sake of the children, (if there are children), but also so that both parties can peacefully agree an amicable way to divide the assets of the marriage without having to revert to the Courts. The Court route is not only expensive but also very stressful and can lead to a complete breakdown for future communication between the parties, which is obviously not desirable where there are young children involved.

If you are faced with the possibility of a marriage breakup, the first thing you should explore is the possibility of reconciliation and perhaps meet with a marriage counsellor or seek mediation. Counselling and mediation is confidential and the evidence of a marriage counsellor or mediator is not admissible in Court.

If your marriage breaks up, there a number of options available to you such as Nullity, a Deed of Separation, a Judicial Separation and Divorce.

Nullity of the marriage is a declaration by the Court that your supposed marriage is null and void. In other words, the marriage never happened. Nullity is different from divorce in that while divorce is a declaration ending a valid marriage, nullity is a declaration that a valid marriage never existed.

You may wish to apply for a divorce on the breakup of your marriage. However, this option is not available to you unless you have been separated for four out of the previous five years. Therefore, if you wish to deal with matters such as the division of your assets, pensions, joint savings, family home and all matters regarding your children now without having satisfied the four year separation requirement, then a Separation Agreement may be drafted. The terms of this agreement can be negotiated between both parties or their solicitors, who will negotiate on their behalf. When both parties are happy with the terms set out in the agreement, the agreement shall be signed thereby binding both parties to the terms of that agreement. Once you have entered into a Separation Agreement, you cannot then apply for a Judicial Separation at a later date. However, you can still apply for a



Divorce and the terms of the agreement shall be taken into account by the Judge at the Divorce Court.

If you cannot agree the terms of the Separation Agreement, you can then apply to the Court where the Judge will listen to both parties and decide the terms of the agreement. In granting a Decree of Judicial Separation, the Court can make various orders such as a maintenance order, orders on properties including the family home and pension. However, it is important to note that it is always possible to make orders by agreement between parties even in a Court situation. Again the terms of the Judicial Separation shall be taken into account if you later decide to apply for a Divorce.

If at the divorce stage, a couple who had signed a Separation Agreement or been granted a Judicial Separation by the Court are still happy with the terms of that agreement, then an application can be made to the Court for what is commonly known as a Consent Divorce. Only the applying party will need to be present in Court to furnish the Judge with the consent form signed by both parties and a marriage certificate. A number of questions will be asked of you by the Judge whom you will have to reply to under oath. If the Judge is satisfied, your divorce shall be granted there and then.

You are now free to remarry- that is, if you are brave enough to do so!!!!

If you have any queries regarding the points raised in this article, feel free to contact Jacquelyn on (086) 1617418. Alternatively, you can speak with Jacquelyn at her Free Legal Advice Clinic which will be held at the St. Vincent de Paul, Ozanam Centre, New Road, Mallow on Tuesday the 25th of June next between 11am and 2pm. Feel free to call with or without an appointment. All legal queries welcome.

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