

CARMODY MORAN SOLICITORS LLP

AWARD WINNING LEGAL ADVICE

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DIVORCE ,JUDICIAL SEPARATION & SEPARATION AGREEMENTS: A BRIEF GUIDE:

Facing into a Divorce or Separation is stepping into the unknown for many; even knowing what the difference between a Judicial Separation, a Separation Agreement and a Divorce is, can still leave many unanswered questions and be confusing. With this in mind, we have put together a short information sheet about Divorce and Separation in Ireland which we hope will be of use.

This is not intended as legal advice or a replacement for good, in-depth assistance from a solicitor and if you do need legal advice you should contact a specialist family law solicitor. If you need advice, please let us know and one of our solicitors will be delighted to help you. No matter the legal issues you are facing, Carmody Moran Solicitors will be on hand to listen and advise of your legal options and the best route to resolution.

In Carmody Moran Solicitors LLP, you will have legal expertise on your side who will help you to navigate through whatever legal process lies ahead, meaning you can move forward in life.

Our Approach

In 2015 & 2017 Carmody Moran Solicitors LLP were finalists in the Irish Law Awards for Excellence in Client Service, and again in 2019 and 2021 for Litigator & Litigation Law Firm of the Year. We are focused on obtaining the best results for our clients and do this by applying our knowledge and legal experience to work with our clients, listening to them and on achieving the best outcome.



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Separation and Divorce can seem overwhelming.

This information sheet is intended to explain in simple broad terms, the options when separating and you are not eligible or intending to apply for a Divorce in Court.

The partners in Carmody Moran Solicitors LLP are experts in their field, but do not take our word for it, check out our on line reviews and take the time to read our website.

“Niamh is a lovely person she made a difficult and lengthy process easy and answered any questions in a timely manner, very approachable and thorough.”

“With her guidance and experience I found her to be very professional and understanding of my position, every step of the process was explained to me without overwhelming me. I cannot speak highly enough of Niamh and her team. I am happy to recommend them to anyone.”

JF, client, November 2021

“Would highly recommend Anthony Carmody as he was so supportive with me and my family's case. If you made contact he would ring or email you back that day and explain things in your language”

AR, client, March 2021

What is a Legal Separation?

A legal separation is an umbrella term for the ending of a marriage and allows a separating couple to work out details such as:

- **Property** - what will happen to the family home,
- **Financial** - payment of maintenance, pension arrangements
- **Children** - Who will have primary care of the children, what will the contact arrangements for the other parent be?

A legal separation can be obtained through either a **Separation Agreement** or a Court Ordered **Judicial Separation or Divorce**. You do not have to go to court to get legally separated if you and the other person agree on the terms on which you are separating by way of a Separation Agreement. Either way you are still legally married after a legal separation and cannot get remarried unless you obtain a Divorce from court at a future date.

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What is a Separation Agreement?

A **Separation Agreement** is a legally binding written contract between spouses seeking to resolve their future rights and duties. Such agreement is also known as a Deed of Separation. The agreement will include a number of terms, including :-

- An agreement to live apart and not to disturb or interfere with each other;
- Arrangements about responsibility for, and care of, the dependent children,
- The amount of maintenance to be paid for the support of the dependent spouse and children and how and when the maintenance is paid;
- Arrangements as to who will own and who will live in the family home;
- Arrangements as to who will own any other property;
- Arrangements as to who will pay any mortgage(s); and
- Arrangements as to succession and inheritance.

A Separation Agreement is only binding between you and your spouse. It does not bind anyone else: for example if you agree changes to the terms of your pension arrangements (so that some of your pension will go to your spouse) the trustees of your pension scheme cannot implement these changes without a Court Order called a Pension Adjustment Order being made. This can only be effected by way of Court Orders in the context of a Judicial Separation or Divorce.

Likewise an agreement about paying the mortgage or ownership of the family home will not bind a lender unless they also agree to the arrangement.

What is a Judicial Separation and how is it different from a Divorce?

If the couple cannot agree on a Separation Agreement or require pension or property related Orders, then they may apply for a Judicial Separation or Divorce through the Courts. A Judicial Separation is for the most part the same as Divorce, but the parties are still legally married to each other and cannot remarry where an Order of Judicial Separation is granted. However, for all other purposes it acts more or less the same as a Divorce and can settle issues such as maintenance, access, property and pensions. The time frame for granting an Order of Judicial Separation is less than that for a Divorce. For a Divorce the couple must be separated for two of the preceding three years on the day the papers are filed in Court. For a Judicial Separation, the parties must be separated for only 1 year prior to filing papers in Court

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Grounds for Judicial Separation & Divorce:

A court can grant an order for Judicial Separation where the parties have been living apart for one year before the applications made whether or not the other party consents, and for two of the preceding three years in respect of an application for a Divorce.

"Living apart" does not necessarily mean in separate dwellings. You can be "living apart under the one roof" in certain circumstance. Other grounds for judicial separation are;

- Adultery
- Unreasonable behaviour
- Desertion for a continuous period of one year before the time of the application
- Where no normal marital relationship has existed between the spouses for at least one year.

In making an order for judicial separation, the court may also make ancillary orders in relation to matters such as custody and access, financial orders, domestic violence orders, financial compensation orders, pension adjustment orders and other arrangements.

Family Mediation

Mediation is a process for resolving disputes where those in dispute meet with a third party who helps them to negotiate an agreed resolution. Mediation is not relationship counselling.

With mediation you will be helped to make you own decisions that suit your circumstances. This is not a legal process. The role of the mediator is to help a couple in their decision-making, to stress test those decisions with them, and explore all possibilities before a final decision is made. The role of the mediator is not to judge on issues. Crucially, although the mediator may have a legal background, it is not the role of a mediator to give legal advice to either party, however the mediator may provide legal information to the couple where appropriate in terms of procedures and the law. The mediated agreement is not binding until it has been put into a legally binding format drawn up by the parties' solicitors.

Negotiated agreement / settlement during the Judicial Separation or Divorce:

A negotiated agreement can happen at any time during a family law case. A prerequisite for meaningful negotiations is that the parties are attending voluntarily, that they are motivated to resolve matters, and that full financial disclosure has been made. These negotiations require an ability to communicate, a low level of conflict, and a high level of trust. An advantage of traditional negotiations is that they are relatively easy to organise, are informal and flexible. There is no additional cost to the parties other than having their legal representatives present.

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If successful, terms of settlement are drawn up and signed by the parties and ruled (approved) before the court where Judicial Separation or Divorce proceedings are issued. Alternatively a Deed of Separation is drawn up by the parties' respective solicitors reflecting the terms agreed. Negotiating an agreement as part of the Court process, is *the* major influencing factor in reducing legal costs.

Legal Costs when Separating

As you will also appreciate from the above, legal costs can be reduced where there is co-operation between you and your spouse and where an agreement can be reached either through mediation or through negotiations between your respective solicitors, legal costs can be greatly reduced.

Legal costs will be greatly increased if Court proceedings are necessary and particularly if these proceedings become protracted either through a refusal to deal with matters in a timely manner or within the time limits as set down by the Court rules. It is therefore always in party's interests to try and make every effort to endeavour to resolve matters amicably and out of Court where possible or without the necessity of a Court hearing.

The upper end of this scale is estimated on the basis that the matter progresses requiring urgent preliminary or interim relief applications or other matters that may cause the matter to become protracted such as considerable amounts of discovery and financial documents requiring expert review.

In family law matters, it is generally ordered that each party to the proceedings bears their own costs. This approach is generally taken by Judges so that one side is not ordered to bear all of the legal costs so as to allow the parties to the family dispute to hopefully move forward and not have the Court outcome add to ill feelings into the future by feeling punished by the outcome of the case.

Initial Consultation in family law matters – €200 (+ VAT)

In the course of this one-hour consultation with an experienced qualified family law Solicitor, your initial options will be assessed and advised upon as well as practical advice furnished to try to assist and alleviate your current situation. Your Solicitor will be able to advise you of your options and future costs and you can then decide how you wish to proceed.

Bespoke Funding Services

We know that like families every family law case is different and everyone's circumstances are different. We will discuss with you frankly the likely costs involved and do our best to estimate these at the outset. Our billing processes are extremely transparent and it is our practice irrespective of funding arrangements to quarterly update clients on their account in such matters.

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Most of our clients organise a monthly payment on account towards fees which amount is then credited against each quarterly bill. This has the advantage of our clients not facing a single legal bill when their case is finalised and allows them to budget accordingly.

At Carmody Moran we do not believe in 'shock' billing, we appreciate that clients want experience, expertise, transparency, and value for money. We are happy to enter into bespoke fixed fee arrangements with clients, which arrangements are assessed on a case by case basis.

Legal Aid Board

The Legal Aid Board is responsible for the provision of legal aid and advice on matters of civil law to persons unable to fund such services from their own resources. The Board's services are provided by a variety of means including a network of thirty three full time law centres located throughout the country and a number of other part time law centres. If you have limited financial means you are likely to be eligible for financial assistance in family law matters and should make an application by apply to the Legal Aid Board directly. Their contact details are:



Head Office: Quay Street, Caherciveen, Co. Kerry. Phone: 066 947 1000. Email [;info@legalaidboard.ie](mailto:info@legalaidboard.ie) Website: www.legalaidboard.ie

NEXT STEPS TO PROGRESS

At Carmody Moran Solicitors LLP family law clients are offered an initial no obligation consultation to discuss their situation. There is a charge for these appointments, and they normally last one hour. You will gain more information as to your situation if you have some information to hand for that consultation. To commence your case then earnest, there are several pieces of information and documentation that you can gather that will help the process move forward smoothly:

Contact Us

Telephone 01 827 2888

Email

solicitor@carmodymoran.ie

www.CarmodyMoran.ie

1. An original state marriage certificate
2. Details of your income and all assets
4. Details of all loans, including mortgages
5. Details of all pensions and life insurance policies.
6. A financial history of the relationship
7. a copy of any previous marriage certificates / Divorces
8. PPS Number(s) – needed for proof of identity,
9. Photographic identification such as passport(s) or driver's licence,
10. Utility bill / bank statement (within the last 3 months) to prove your address.

THE PARTNERS OF CARMODY MORAN SOLICITORS LLP ARE HIGHLY EXPERIENCED FAMILY LAWYERS. THEY ARE SKILLED NEGOTIATORS AND EXPERIENCED BEFORE THE DISTRICT, CIRCUIT, HIGH COURT, AND COURT OF APPEAL IN FAMILY LAW MATTERS. TELEPHONE US ON 01 827 2888 TO ARRANGE A CONSULTATION IN BLANCHARDSTOWN OR THE CITY CENTRE AT ORMOND QUAY. READ MORE ABOUT OUR PARTNERS BELOW.

ANTHONY CARMODY, Solicitor & Notary Public, has practiced in the area of family law, probate litigation, catastrophic personal injury and general litigation, for over 20 years.

Having worked in one of the *big 5* firms in Ireland and in two boutique litigation firms, he co-founded Carmody Moran Solicitors LLP. He uses his considerable litigation experience to obtain the best results for his clients, and most of all, he listens to what it is that his clients actually want to achieve.

He is a graduate of Maynooth University, the Law Society of Ireland and the Faculty of Notaries Public in Ireland. He is a member of the Family Lawyers Association, the Medico-Legal Society, the Faculty

of Notaries Public, the Society of Trust and Estate Practitioners, and the Dublin Solicitors Bar Association.

NIAMH MORAN, Solicitor, co-founding partner of Carmody Moran Solicitors LLP is an experienced litigator and specialises in private litigation in the areas of family law, probate disputes, and incapacity law. She is highly skilled at working with family law clients with large property portfolios, conducting settlements, asset distribution and, where necessary, associated debt resolution.

Niamh is also a Chairperson with the Mental Health Commission's panel of Mental Health Tribunals and a former member of the Advisory Committee for the State Claims Agency which manages claims and provides risk advisory services to State Authorities. From 2006 to 2012, Niamh was appointed by the Minister for Justice as a board member of the Executive of the Legal Aid Board and in 2020 was appointed by the Minister for Children and Youth Affairs as an Independent Appeals Office to Pobal's Early Childhood Years Scheme. She has also served on voluntary boards assisting vulnerable adults and children.

We hope that this brief guide has been of help to you and if you require further information or assistance, please do not hesitate to contact us

NOTE: **The information in this document is provided for information purposes only.**
It does not purport to be either a statement of the law or legal advice.