



A GUIDE TO  
FAMILY LAW IN  
MARITAL  
BREAKDOWN



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## FAMILY LAW LEGAL TEAM

Thank you for instructing Lynch Solicitors as your solicitors.

This guide is written with the intention of explaining the legal options in the breakdown of a marriage, in hopefully, plain language.

The guide should not be read as legal advice and is for information purposes only.

You should remember at all times that if you have a query about your file, you should ask us.

An email, telephone query or face to face consultation is always welcome.

Lynch Solicitors can advise you on all of the legal issues that can arise in a breakdown situation.

We can guide you through the process, with the minimum stress, and with a clear and transparent cost structure.

### ◆ John M. Lynch

John offers in depth knowledge of Irish family law based on more than three decades of experience working with clients in the area. This is combined with his own personal experience of the process and on-going research into Irish Family Law as it evolves. That personal experience combined with expert legal knowledge gives him a special ability to help find solutions during difficult and traumatic times.

John has extensive experience in complex Property Settlement matters and Children's matters.

John has presented many papers and seminars on Family Law issues to a wide range of audiences. He has presents a weekly legal advice slot on Tipp FM on their main flagship show and has been contacted by national media publications for comment on Family Law issues.

John is committed to the development of Lynch Solicitor's continued excellence and its position as one of the most experienced and professional Specialist Family Law Firms in the South East Region.

◆ Gillian O'Mahony

Gillian O'Mahony, is Partner at the firm and manages the firms Family Law and Litigation Departments.

Gillian is vastly experienced in advising on separation and divorce and the far-reaching legal, financial and taxation implications of marital breakdown.

She also has wide-ranging experience in cases involving children, non-marital cases (cohabitation) and pre-marriage advices.

Gillian has also lectured extensively in the area of Family Law at University level and has also been a regular presenter of the legal slot on Tipp FM focusing on Family Law.

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## WHAT HAPPENS WHEN YOU FIRST MEET WITH US?

The first consultation with you is very important and serves as a fact finding exercise for both you and us.

Solicitors are obliged by law to discuss all options available in a separation or divorce.

We are required to discuss the options of:

- Reconciliation
- Mediation to ensure that all efforts have been made to assist in a breakup and to help achieve a consensus approach.

We have included in this information pack the names and addresses of people qualified to help. It is important for you to remember that the evidence of marriage Counsellors and mediators is not admissible in Court. This maintains



the confidentiality that is critical to ensure the benefits of availing of such assistance.

It is also beneficial for you to seek such assistance throughout this traumatic and difficult situation. It offers you a safe place to speak frankly of your problems, worries and feelings. It also gives the necessary support to make critical decisions during the process of separation. The Counsellor is there to listen without judgment and help guide you in a direction that will enable you to take positive steps for the future.

By having this support, you will be better able to make the key decisions that are needed during the process of separation.

In addition to providing this mandatory information, we record all the relevant details of your situation. We explain what is involved in each of the options available and give an indication of the likely timeframe involved in resolving the situation, depending on the course of action pursued and also the likely costs involved.

Top of our agenda with all clients who have children is discussing approaches to protecting children during what is a traumatic time for both the children and adults involved.

## SEPARATION OPTIONS

### DEED OF SEPARATION

#### WHAT IS A DEED OF SEPARATION?

A Deed of Separation is a legally binding document that may be drawn up and executed by spouses on separation.

It avoids the need to go to Court.

A fundamental provision of every Separation Agreement is an agreement that the parties will live apart.

A Separation Agreement can be arrived at in a number of different ways depending on the circumstances.

You can agree terms by negotiation between the legal advisors or you can deal with it by mediation.

If you reach agreement by mediation – i.e. appointing an independent party to help you reach agreement- you can commit the mediation terms to an enforceable agreement .

#### WHAT IS INCLUDED IN THE DEED OF SEPARATION?

Usually a Deed of Separation will deal with

- Custody
- Access to children
- Maintenance
- Family home & other property
- Succession Act rights

The terms will be committed to writing and signed by both parties. The Deed may also deal with matters that may cause conflict in the future, such as the education of dependent children or the entitlement to apply for passports for dependent children.

However, one provision that a Deed cannot deal with, without first getting Court approval, is a pension.

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## WHAT ABOUT THE CHILDREN?

A Separation Agreement can deal with all issues concerning your children, for example:

- How often access is to be exercised and for how long, i.e. hours weekly or a whole day
- Whether access includes overnight stays
- Whether it is to take place in the family home or elsewhere
- Who is to have the children for holidays. It is also helpful to state the circumstances in which a child may be taken out of the country and who will be the custodian of the child's passport.

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## WILL THE SEPARATION AGREEMENT DEAL WITH THE FAMILY HOME?

The Separation Agreement can deal with who has ownership rights in the family home and in what shares. Who will live in it and who will pay for it. It can deal with the question of rent/mortgage payments, repairs, and improvements. It may also include provision for the transfer of the interest of one spouse to the other spouse or it can deal with the sale and disposal of the property.

How you deal with the family home is a matter that needs discussion and agreement with both parties.

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## WHAT IS THE LEGAL EFFECT OF THE AGREEMENT?

When signed by the parties, it is a binding, enforceable legal contract.

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## CAN I REMARRY AFTER SIGNING A SEPARATION AGREEMENT?

The agreement does not give the right to remarry. To remarry, you must qualify for and get a Decree of Divorce.

If you sign a separation agreement, you should also consider reviewing or making a Will.

If you are or become involved in a second relationship, you should consider its legal implications and explore the need for a co-habitation agreement.

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## WHAT ARE THE ADVANTAGES OF A SEPARATION AGREEMENT?

You do not have to be separated for any period of time before you enter into a Separation Agreement. If there is agreement it can be drawn up and signed in a reasonable time. Since the Courts do not need to be involved, it is less costly.

Most importantly, the spouses decide the terms of their separation rather than have the terms imposed by a Court.

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## WHAT IF MY SPOUSE REFUSES TO SIGN THE AGREEMENT?

You cannot force someone to sign a Separation Agreement.

If you want to formalise the separation, then you are obliged to go down the Court route.

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## DO WE BOTH NEED OUR OWN SOLICITOR?

The parties should each seek legal advice.

We do not act for both parties as we take the view that it is not possible to objectively advise both parties.

As a Deed of Separation is a legally binding document with provisions that may have serious consequences, it is important that independent legal advice is obtained by both parties to ensure that everyone is aware of the meaning of each provision.

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## IF WE SIGN A DEED OF SEPARATION CAN I APPLY FOR A JUDICIAL SEPARATION?

A Deed of Separation avoids the need to get a Judicial Separation.

However, it does not act as a bar to Divorce proceedings.

The Court is required in an application for a Divorce to take the terms of a Deed of Separation into account.

## JUDICIAL SEPARATION

### WHAT IS A JUDICIAL SEPARATION?

Following marital breakdown and a period of separation, a spouse may apply for a Judicial Separation. The effect of obtaining a Judicial Separation is that both spouses are relieved of the obligation to cohabit. The spouse seeking the separation is called the Applicant and the spouse defending the separation is called the Respondent. Both the High Court and the Circuit Court have jurisdiction to hear Judicial Separations, depending on the extent of the family property.

### WHAT ARE THE GROUNDS FOR A JUDICIAL SEPARATION?

- Adultery.
- A spouse has behaved in such a manner that the other spouse can no longer be expected to reside with him/her. This relates mainly to grounds of cruelty both mental and physical.
- The spouse has deserted or forced the other to leave the home at least one year before the date of the application.
- The spouses have lived apart for one year immediately before the date of the application.
- The marriage between both spouses has broken down irretrievably and the Court is satisfied that a normal marital relationship has not existed between the spouses for the period of at least one year immediately before the date of the application.

Irretrievable breakdown is the most common ground and can be used by a spouse who may be at "fault" for the break up of the marriage.

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## HOW DO I GET A JUDICIAL SEPARATION?

We will issue Judicial Separation proceedings in the Court. The proceedings will be in either the Circuit Court or High Court depending on the extent of the family assets. If the value of the assets is in excess of €3 million we will issue the proceedings in the High Court.

## DECREE OF DIVORCE

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### WHEN DID DIVORCE BECOME LEGAL IN IRELAND?

In November 1995, following a referendum in Ireland, the Irish constitutional ban on divorce was lifted. Following the lifting of this ban, the Family Law Divorce Act, 1996 was passed.

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### WE DID NOT GET MARRIED IN IRELAND- CAN WE APPLY FOR A DIVORCE IN IRELAND?

Yes, it does not matter where you got married. Before the Court will grant a Decree of Divorce sought, the Court must be satisfied that either spouse is domiciled in the State at the date of issue of the proceedings or that either spouse was ordinarily resident in the State for one year before the date of issue of the proceedings.

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## WHO CAN APPLY FOR A DIVORCE?

To get a Decree of Divorce from an Irish Court, it is necessary to satisfy the Court that:-

- At the date of the commencement of the proceedings, the spouses have lived apart for a period proscribed by legislation ( Presently , four out of the five previous years).
- There is no reasonable prospect of reconciliation between the spouses.
- Proper provision is or will be made for the spouse and dependent members of the family.

This means that we have a **no fault** divorce in Ireland

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## CAN I RE-MARRY AFTER I GET MY DIVORCE

Yes, a Divorce entitles you to remarry.

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## MUST I GO TO COURT TO GET A DIVORCE?

Yes, an Irish divorce must be applied for in either the High Court or the Circuit Court.

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## DO I HAVE TO HAVE A JUDICIAL SEPARATION OR HAVE SIGNED A DEED OF SEPARATION BEFORE I APPLY FOR A DIVORCE?

No, you need only satisfy the four out of five years time period (or such period as proscribed by legislation) and deal with proper provision.



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## WHAT HAPPENS IF I NEED FINANCIAL HELP OR ACCESS TO MY CHILDREN OR PROTECTION FROM MY SPOUSE BEFORE THE CASE IS HEARD IN COURT?

In either Judicial Separation or Divorce, Orders may be sought by a spouse who is seeking a Decree of Divorce.

The Applicant spouse may apply for an Interim Order.

Some of the Interim Orders that may be granted before a Divorce hearing are:-

- A Barring Order - This means that one of the parties may no longer reside in the family home
- A Protection Order - This means that if there is any threat to your safety the Gardai can be asked to get involved.
- A Custody & Access Order - This will deal with issue around the care of the children.
- A maintenance order from the date of the application to the date of the final hearing - At which stage it may be varied.
- A freezing order blocking the sale of assets before the hearing

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## WHAT ORDERS CAN THE COURT MAKE WHEN MY JUDICIAL SEPARATION OR DIVORCE IS HEARD?

- A Maintenance Order for the benefit of a spouse or children, providing for either periodical or lump sum payments
- A Property Adjustment Order providing for the transfer of family property in to the sole name of one or other of the spouses
- An Order granting the right to occupy the family home to the exclusion of the other spouse
- An Order for the sale of family home
- An Order determining disputes as to the ownership of family property
- A Barring or Safety Order - which has the effect of barring one of the parties from the family home or ensuring ongoing protection by the Gardai.

- An Order affecting the welfare of the children, such as custody and access. It deals with who is the primary carer and what arrangements are made for the non-resident parent to see the children.
- An Order extinguishing succession rights. When married you are entitled to part of your spouse's estate in the event of death. It is not uncommon to remove such right on Divorce - however, this is not always the most advisable thing to do.
- An Order adjusting the pension entitlements of the spouses.

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## CAN WE LIVE SEPARATE AND APART IN THE SAME HOUSE?

The Courts have decided that you can be living separate and apart under the same roof. It is a matter of evidence in each case. You must prove that you have been living separate lives over the required period.

## NULLITY

This is also an option where the Court would make a finding that a marriage never existed. This means that you can remarry.

Since the introduction of Divorce it is now quite a rare option.

## PROPER PROVISION: HOW WILL THE COURT DEAL WITH THE FAMILY FINANCES?

When a couple decides to separate or divorce one of the primary difficulties is often to how they share their assets and financial responsibilities going forward.

In dealing with the breakdown of a marriage, the Courts will look to make what is deemed to be “proper provision” for the parties involved. Their overarching aim is fairness and justice.

The Court will consider a list of criteria and arrive at the proper provision based on this criteria, such as:

- The income, earning capacity, property and other financial resources which each of the spouses concerned has or is likely to have in the foreseeable future
- The financial needs, obligations and responsibilities which each of the spouses has or is likely to have in the foreseeable future (whether in the case of the remarriage of the spouse or otherwise)
- The standard of living enjoyed by the family before proceedings or before the spouses commenced to live apart
- The age of each of the spouses, the duration of their marriage and the length of time during which the spouses lived with one another
- Any physical or mental disability of either of the spouses
- The contributions which each of the spouses has made or is likely in the foreseeable future to make to the welfare of the family. This includes any contribution made by each of them to the income, earning capacity,

property and financial resources of the other spouse and any contribution made by either of them by looking after the home or caring for the family

- The effect on the earning capacity of each of the spouses of the marital responsibilities assumed by each during the period when they lived with one another and, in particular, the degree to which the future earning capacity of a spouse is impaired by reason of that spouse having relinquished or foregone the opportunity of remunerative activity in order to look after the home or care for the family
- Any income or benefits to which either of the spouses is entitled by or under statute
- The conduct of each of the spouses, if that conduct is such that in the opinion of the Court it would in all the circumstances of the case be unjust to disregard it. The Courts have said that this conduct must be gross and obvious to be taken into account.
- The accommodation needs of either spouse. The value to each of the spouses of any benefit (for example, a benefit under a pension scheme) which by reason of the decree of divorce concerned, that spouse will forfeit the opportunity or possibility of acquiring
- The rights of any person other than the spouses but including a person to whom either spouse is remarried.

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## IS IT BETTER TO AGREE?

The Courts have expressed support for the notion that couples can make agreement between themselves as to how they wish to order their affairs.

Any such agreement should be given significant weight should either of the parties later wish to re-visit the matter. This is particularly important if the couple at the time of coming to the agreement had specified that it should be final.

These agreements can take the form of negotiated agreements such as terms of settlement, separation or mediated agreements, or pre-nuptial agreements.

The Courts will usually only get involved to alter this agreement, if such agreement does not “properly provide” for one party or if the circumstances of one or other of those involved have changed dramatically in the meantime.

In a similar vein, the Courts have indicated that any windfall or wealth which one party gets after the couple’s relationship has formally ended or, assets which were inherited by one party should not automatically be open to a claim by the other unless they are required to make proper provision or to reflect contribution.

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## IF YOU HAVE A SEPARATION AGREEMENT OR JUDICIAL SEPARATION – WILL EVERYTHING BE LOOKED AT AGAIN AT THE DIVORCE STAGE?

There are some general guidelines:

- A prior settlement with a “full and final settlement” clause whether by Deed or Consent can only be varied in the most acute circumstances of change.
- What are called, “second bite cases”, when there is an increase in the other spouse’s value are effectively ruled out.
- The terms of applying for further financial relief in changed circumstances are set out narrowly and are difficult to achieve. The Court does not see the making of proper provision and exercise to “redistribute wealth”.
- There has to be a substantial change – such as an illness - to justify an application for further provision. If there is no change, there is no new provision.

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## IS THERE A GENERAL GUIDELINES ON HOW THE COURT MIGHT DEAL WITH FAMILY ASSETS?

- The date of the trial will remain the date of the valuation of the assets. In other words the argument that it should be different dates e.g. date of separation/ acquisition has not been revived.
- There should be no discrimination e.g. by being a stay at home mother and this remains, although the Courts now enquire more robustly into the availability of work for spouses;
- Irish law did not follow the English law in applying the principle of "Equality" between spouses. The standard to be followed is that laid down as regards "*proper provision*" being made for each of the spouses and children.
- The trial judge has a wide discretion.
- Each case depends on its particular circumstances.

We have found that as a general rule, in cases where there are sufficient resources, most judges will do a 50/50 split of assets .

It is important to bear in mind that this is a very general yardstick and will not apply where there is not enough to go round or where there is more than enough .

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## IS IT POSSIBLE TO PROTECT YOUR ASSETS IN A SEPARATION OR DIVORCE?

One of the ways people can try to do this preemptively, is by having a pre-nuptial agreement setting out how the parties will divide their assets and deal with their finances upon Divorce or Judicial Separation

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## MY SPOUSE HAD AN AFFAIR – WILL THE COURT TAKE THIS IN ACCOUNT?

Responsibility for the breakdown of the marriage is not relevant. Divorce is based on a 'no fault' principle.

However, in any divorce application, the Court must take many matters into account.

One of the things it will look at is conduct of the parties 'where that conduct is such that in the opinion of the Court it would in all the circumstances of the case be unjust to disregard it'.

A Court will not, however, take conduct into account unless it is 'gross and obvious'.

This will rule out conduct as a significant factor in most family law cases.

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## WHAT WILL THE COURT DO WITH THE FAMILY HOME? - I WANT TO CONTINUE TO LIVE IN IT.

The Family Home features in almost every application for Divorce/Judicial Separation.

The Court must ensure that both parties' accommodation needs are met and in order to do so can make these property orders:

- The Court may direct that property be transferred from one spouse to another, or to any dependent family member, or to a specified person for the benefit of such a member.
- The Court can direct that one party live in the property for a certain period of time or for their life or until the youngest children reaches a certain age
- The Court can order the sale of the house and the division of the net proceeds of sale in certain proportions.

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## CAN COURTS MAKE ORDERS ON ASSETS THAT ARE NOT THE FAMILY HOME?

The Court can look at all property – assets in the name of one spouse, in the name of one spouse and others, in joint names and trust property. It makes what are called Property Adjustment Orders. It can be made on stocks, shares, art, livestock, businesses, investments, savings, holiday homes, commercial properties and cars or boats. The Court has wide discretionary powers in making such property adjustment orders as it deems necessary in each individual case.

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## HOW ARE INHERITED ASSETS TREATED?

Assets inherited by one of the spouse will usually form part of the marital assets and be taken into account by the Court.

The extent to which they will be taken into account will depend on the circumstances of each case.

As a general rule if there are ample assets, inherited assets will be treated differently to jointly acquire assets.

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## ARE PENSIONS TAKEN INTO ACCOUNT?

A pension is considered to be a valuable matrimonial asset and on Divorce/Judicial Separation is seen in the same way as any other asset.

The Family Law Acts require pension benefits to be taken into account in arriving at a financial settlement in the case of a Judicial Separation or Divorce.

The Courts can decide whether or not it is appropriate to split pension rights in order to regulate a couple's financial affairs.



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## CAN MY SPOUSE AND I STILL INHERIT FROM EACH OTHER AFTER OUR DIVORCE?

The Succession Act 1965 provides that a widow or widower is granted an automatic share in the estate of a deceased spouse. A spouse is essentially provided for out of the estate of the deceased spouse regardless of the terms of his or her will. However, once the Divorce is granted the parties are no longer spouses and therefore the right to inherit under the Succession Act 1965 is not available. However the Court can make an Order providing for a divorced spouse out of the deceased spouse's estate if it thinks it appropriate and if such an application is made within the time limit set down in the Family Law (Divorce) Act 1996. The Court cannot make such an Order where the spouse seeking the Order has remarried.

It is critically important that you keep your will up to date both during the divorce process and thereafter.

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## DO I NEED TO MAKE A WILL?

We always recommend that you should make a Will.

We also recommend that you should keep a Will up to date.

When you are separated it is important to make a Will that reflects your wishes as your circumstances change.

We also recommend that when you have finalised your separation that you make a Will that reflects any changes made.

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## WHEN I GET A DIVORCE/SEPARATION MUST I PAY MAINTENANCE FOR MY SPOUSE?

There is a legal responsibility in Ireland on both spouses to maintain each other and any children in accordance with their means.

Maintenance can be paid periodically (i.e. weekly or monthly) or in a lump sum.

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## WHO HAS A DUTY TO MAINTAIN A CHILD?

Both parents have a responsibility to maintain their children.

This responsibility exists regardless of who has custody or is the primary carer.

Responsibility to maintain a child ceases when the child is 18 years of age, or 23 years if the child is in full time education.

The duty to maintain children exists independently of any maintenance arrangement between the spouses for one another.

If the child has a mental or physical disability to such a degree that it will not be possible for the child to maintain him/herself fully, then there is an obligation to support them during such disability.

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## HOW MUCH MAINTENANCE MUST BE PAID?

The District Court may not award more than €500 per spouse and €150 per dependent child per week. There is no such limit on the amount of maintenance which the Circuit Court can order. The amount payable is calculated based on the needs and income of both parties. There is no precise method for establishing the amount but the Court will try to strike a balance between the needs of one party and the income of the other.

Each party must disclose their finances to the Court and the Judge will consider all of the family's circumstances when making a maintenance order.

It is well recognised that following the break-up of a marriage each spouse has fewer resources, and the approach of the Courts to maintenance has sometimes been to apply hardship equally between the couple.

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## DOES PAYING MAINTENANCE PROVIDE RIGHTS?

Even if a parent financially supports a child, it does not give them automatic rights of guardianship or access.

The Courts do, however, always recommend that a child's welfare takes priority, which generally means having both parents in their life.

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## WHEN DOES SPOUSAL MAINTENANCE END?

A married person can seek spousal financial support following the breakdown of the marriage. The obligation to maintain and support a spouse continues even if the person paying the maintenance remarries and takes on the responsibility for the support of a new spouse and dependent children.

In general, the responsibility only ends when the spouse receiving maintenance dies, remarries or is no longer dependent.

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## IS AN EX-PARTNER ENTITLED TO MAINTENANCE?

Living with your partner may make you a qualified cohabitant which in turn might give you a right to maintenance.

To be a qualifying cohabitant you must have lived with your partner in an intimate and committed relationship for five years (or two years if you have children together).

If you can prove this, you can apply for support or maintenance payments by showing financial dependency as a result of the relationship and its demise.

It is a matter for the Courts to decide who “qualifies” and to grant any maintenance payments that subsequently arise.

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## HOW CAN YOU GET MAINTENANCE?

If agreement cannot be reached either by the parties themselves or through their solicitors, then they can apply to Court for a maintenance order and the Judge decides what maintenance is to be paid.

In doing so the Judge will look at the individual circumstances of each case and strike a balance between what one party needs and what the other party can afford.

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## HOW IS MAINTENANCE PAID?

Parties can make payment arrangements between themselves or it can be paid through the District Court Office where the District Court Clerk will monitor the payments.

In cases where a person fails to comply with a Court order and does not pay the amount awarded, an Attachment of Earnings Order can be sought from the Court and the maintenance is deducted by the paying employer.

The employer has to comply with this otherwise they would be held in contempt of Court.

If the person fails to pay, an Enforcement Summons can be applied for which can lead to the person being imprisoned if they have no defence to offer for non-payment.

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## IS A CLEAN BREAK REALLY A POSSIBILITY?

There is no provision for a “clean break” in Irish family law legislation.

However, the Courts have accepted that there is a principle of law that supports any effort made by the Courts or parties to arrive at finality or closure, wherever possible.

This is particularly true in a breakup where there are ample resources to cater for both parties’ (and their dependents) needs.

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## DOES SEPARATION OR DIVORCE REALLY MEAN THE END?

A divorce will legally end a marriage. There are some limited cases where any division of assets that has taken place, can be re-visited and varied, such as, maintenance and pension contingents.

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## WHAT HAPPENS IF MY CIRCUMSTANCES CHANGE AFTER DIVORCE?

If a party is looking to re-visit their Divorce settlement, they will have to show the Court that:

- New events have taken place since the previous Court order was made
- These new events happened relatively soon after the previous order
- They have not delayed in making their application to alter the old terms
- No other party who may have an interest in any of the assets involved will be negatively affected if a change to the order is made

The Courts have taken the view that, unless the change that has occurred makes the previous terms impossible to comply with, they will be very reluctant to alter what was intended to be the final settlement.

The Courts seek to maintain a degree of certainty.

Accordingly, divorce terms seem to stand unless there are exceptional circumstances which would make it unjust and unfair for them to remain.

## GUARDIANSHIP, CUSTODY, ACCESS & PRIMARY CARER.

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### WHAT IS GUARDIANSHIP?

Guardianship means the rights and duties of parents in the upbringing of their children. Guardianship rights entitle a parent to make important decisions about that child's upbringing, for example, deciding on the child's religion, education, medical treatment and general rearing.

The natural mother of a child is automatically a guardian of the child. A father who is married to the mother of his child also is automatically is a guardian.

This applies even if the couple married after the birth of the child.

However, a father who is not married to the mother of his child does not have automatic guardianship rights to that child.

If the mother agrees for him to be legally appointed guardian, they sign a joint statutory declaration.

If the mother does not agree, he must apply to the Court.

More often than not, the Court will grant guardianship if satisfied that he has a history of involvement with the child.

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## WHAT IS CUSTODY?

Custody means the right to the physical care and control of the upbringing of a child on a day to day basis.

Married parents residing together are the joint guardians and custodians of their children.

After separation they continue to be joint guardians and custodians.

However, one parent may have care and control of the children for more time than the other and take the role of, what is termed, primary carer. This involves the child living with the primary carer and staying with the other parent less frequently.

The role of primary carer is often confused with custody which can lead to unnecessary disputes over custody.

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## HOW WILL THE COURT DECIDE?

The Court will deal with the issue of custody/access & primary carer on the facts. For example, the history of the parties involvement in the care of the children, the needs of the children and the resources of the parents to care for the children - but its primary concern is the child's welfare and it will consider this under the headings of religious, intellectual and moral welfare.

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## ACCESS - IF MY SPOUSE HAS DAY TO DAY CUSTODY OF THE CHILDREN, CAN I STILL SEE THEM?

The parent who is not the primary carer and does not have the day to day care of the child is entitled to access to their children.

Access is defined as the right of the parent, with whom the child does not live, to spend time with the child.

It can include the right to have the child stay overnight either occasionally, on alternate weekends or during school holidays and the right for parent and child to go on holidays together.

In many cases, custody, access and care arrangements for a child are agreed informally between parents.

Where agreement cannot be reached either parent can make an application to the Court to decide the terms and conditions which will govern arrangement for children.

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## DO THE COURTS OFTEN REFUSE ACCESS?

It is unusual for the Courts to refuse access to a parent and they are very much in favour of granting access. The Courts are of the opinion that it is essential that the child knows both parents and that the parent seeking access is able to be involved in their lives.

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## WHAT IF THE COURT MAKES AN ACCESS ORDER AND MY SPOUSE WON'T STICK TO IT?

Once an Access Order is made by the Court then any failure or refusal by the custodial parent to comply with such an Order (i.e. allow access) is deemed to be in contempt of Court.

This can result in term of imprisonment and/or a financial penalty or can be the basis for an application to vary the order and remove the parent as the primary carer.



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## WHAT TYPE OF ACCESS DOES THE COURT ORDER?

There is no magic formula, every situation and family is different.

The Court will take all the circumstances into account, such as, the age of the child and the relationship which the child has with the parent seeking access.

If the parent seeking access does not have a relationship with the child it is common that the access is built up on a gradual basis. This allows both the parent seeking access and the child to become accustomed to each other and to allow them develop their relationship gradually.

If however the parties were in a relationship or married and living together – the child would usually have a relationship with the parent seeking access and there would be no need for them to build up the relationship. The Courts generally requires that access be structured ie certain days/weekends/evenings rather than on an ad hoc basis.

The Court can also order supervised access if this is in the child's best interests.

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## WHAT FACTORS WILL THE COURT TAKE INTO ACCOUNT WHEN REACHING DECISIONS ABOUT THE CHILD?

The Best Interests of the Child is the key!

It has long been the case that the Courts take the best interests of the child in to account when dealing with applications on issues that concern them.

Factors which are usually relevant in considering "best interests" can include:

- The benefit to the child of having a meaningful relationship with both parents.
- The views of the child depending on their age and maturity.
- The physical, psychological and emotional needs of the child.
- The history of the child's upbringing and care, including the nature of the relationship between the child and each of their parents.
- The child's religious, spiritual and cultural upbringing and needs.
- The child's social, intellectual and educational upbringing and needs.

- The child's age and any special characteristics.
- Any harm which the child suffered or is at risk of suffering.

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## CAN THE COURTS TAKE A CHILD'S VIEW INTO ACCOUNT?

Existing legislation, statutory instruments and case law allows for the consideration of children's views. The child's views can be heard either directly, or through a representative.

In child care proceedings a Guardian ad Litem is usually appointed to this role. The Guardian ad Litem provides children involved in family law proceedings with an independent voice in Court. A Guardian Ad Litem is an experienced and qualified person, with expertise in working with children.

The Guardian ad Litem is appointed by the Court and advises on what is in the best interest of the child concerned. The Guardian makes the Judge aware of the child's own wishes. They also consult with the child, the child's family, and any other organisations who know the child and the family. These consultations are crucial to ensure that the child's best interests are presented independently to the Court.

In many cases the child might be old enough that the Judge will decide to meet with the child for a discussion. This will happen in an informal setting eg the Judge's private room and with just the Judge and the child present.

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## WHY WOULD A JUDGE DECIDE TO SPEAK WITH A CHILD?

It has long been recognised that trial judges have a discretion as to whether they will interview children, who are the subject of custody or access disputes, in their chambers or private quarters. The judge may feel that to invite them to give evidence in Court in the presence of the parties or their legal

representative would involve them in a way that may be unacceptable or inappropriate in the marital disputes of their parents.

Typically the Judge will explain to the child that it is the Judge who has to job of resolving issues between the parents of the child. They will typically reassure the child that in speaking to the Judge, the child is not taking sides or picking one parent over another. The Judge will also tell them that their wishes will not be solely (

or necessarily at all,) what the Judge bases their decision on.

## WHEN PARENTS SEPARATE: HELPING YOUR CHILDREN COPE

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### COPING AS A PARENT

When parents separate, they are usually at very different stages in the process.

It is essential that a parent take steps to cope as soon as possible because children need the support and care of both their parents more than ever after separation

One way of helping the process of coping is to deal with the future parenting of the children by agreeing a Parenting Plan.

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### PARENTING PLANS

A parenting plan is an agreement between parents of a child who are no longer in a relationship on common issues which affect the child.

When parties who have children separate, there is a fall out from the separation. Maintenance, care arrangements, schooling issues and matters which affect the welfare of the children must be dealt with.

A parenting plan allows parties to come to a mutual agreement on these so that both parents and the extended family can avoid conflict when issues arise and the children can benefit from consistency in how both parents parent them.

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## WHO IS INVOLVED IN PUTTING TOGETHER THESE PARENTING PLANS?

Parenting Plans are put together in a mediation type scenario.

It requires agreement between the parties and is based on both sides coming together in good faith with a willingness to abide by the terms agreed for the benefit of the whole family.

We can help you in putting together the plan.

We often find people are more comfortable negotiating through someone who is removed from the family situation by appointing a mediator

The primary aim of a parenting plan is to act in the best interests of the children and create a 'conflict free zone'.

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## IS THIS HARD TO ACHIEVE A CONFLICT FREE ZONE?

If children are to survive the trauma of a separation, they must be protected from parental conflict and allowed to enjoy close relationships with both parents.

Despite pain, resentment, and disagreements, it is possible for separated parents to surround their children with a "conflict-free" zone.

To create a conflict free zone, parents should:

- Consider learning to control and restrain themselves.
- They must have the consideration to refrain from arguing and fighting when their children are present. T
- They should save discussion of volatile issues for a time when their child is not around.

Because most children are attached to both parents, each untimed remark is like a physical blow.

- Parents need to shift gears from being marriage partners to being parent partners.

It is often recommended:

- Accept the facts that the other parent has the right to spend time with the children, and that your children have the right to a relationship with the other parent.
- Settle disagreements through give and take and compromise, and respect individual differences.
- Treat the other parent with respect, and avoid making derogatory statements about the other parent in the presence of your child.
- Avoid arguments, scenes, threats, fights, and violence, especially when your children are present
- Do not be overly critical of or try to control the other parent.
- Avoid pressuring the other parent about getting back together, and respect the other parent's privacy.
- Do not sacrifice your child over money.
- Make child support payments on time.
- Gain the other parent's trust by keeping your agreements and promises.

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## SOME VISITATION ARRANGEMENTS TIPS

- There is no right set of arrangements that will suit everyone.
- Access arrangements should be discussed with your children and their needs and wishes taken into account.
- Access visits are meant to be enjoyable, but they can be stressful at first, for all concerned. It is worth persevering with, because they can benefit you all.
- It is helpful for children to have a regular pattern of contact visits which should be established as soon after separation as possible.
- The best pattern of visits will vary with the age of the child. Shorter, more frequent visits may work better for younger children.
- If visits are very short, or very infrequent, it may be difficult for a parent and child to feel relaxed together.
- Overnight stays, where possible, are important in allowing the parent and child to experience ordinary daily routines together.

- Failure by either parent to stick to the arrangements for contact may be distressing for a child and make them feel less secure.
- Because emotions are often raw following a separation, if there is no practical alternative, a neutral contact point/party may be used temporarily.
- If a child does not want to go on a contact visit it is important to try to understand why and to discuss this with those involved.
- Cooperate when there is an emergency or crisis
- Seek help for your child if red flag symptoms persist
- Discussing changes in your family situation can benefit you and your children. It can help avoid misunderstandings and friction between you as parents. It will show your children that they continue to be important to you. Clear communication will also help make the changes run as smoothly as possible.

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## HELPING DIFFERENT AGED CHILDREN COPE:

- **Pre-school children** need reassurances frequently and in simple language. Preschoolers after separation need to spend one-to-one time with both parents and also need frequent contact.
- **School-age children** need honest and open communication with a listening parent. Each party needs to get agreement with the other parent and avoid putting children in the position where they have to take sides.
- **Young adolescents**, you need to communicate honestly and openly and go out of your way to spend time with them and talk and listen to them. Parents need to supervise their teenagers every bit as much as in intact families and need to avoid relying emotionally on their teenagers.

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## HELPING CHILDREN COPE- SOME GENERAL TIPS

- Try to tell the children together and take time to plan what you're going to say.
- Choose a time when you can be with the children after breaking the news.
- Outline the main arrangements for their schooling, where and with whom they will live, where the other parent will live, and arrangements for ongoing contact with both parents and the extended family.
- Give a clear message that the separation is in no way the fault of the children and that there was nothing they could or should have done to stop it.
- Emphasise that although you, the parents, are separating, you will still be their parents. The conflict is between the parents, not between the parents and the children.
- Tell the children that both parents love them and that they will always be part of their lives.
- Check if the children have questions and be prepared to answer the same questions again and again over the next days, weeks and months.
- Children need to manage the process of telling others, for example, friends at school. Parents should help them through how they want to do this, and they should give a clear message that is not a secret or something of which the children should be ashamed.
- Give children time and space to express their thoughts and feelings
- Minimise the life changes your child has to endure.
- Maintain the quality of your parenting - they need your encouragement, love and attention as well as your rules, guidance and boundaries, as much if not more than before.
- Being a good parent means accepting the other parent's role in your child's life and taking steps to support their involvement.

- It is crucial that you don't compete with your former partner for your children's love, and that you don't put your children in a position where they feel they have to take sides.
- Children should not be used as go-betweens between adults or as spies on the former partner.
- It is excessive conflict between parents, whether they are living together or not, which seems to have the most damaging effect on children.
- Parents need to set aside special one-to-one time with their children on a regular daily basis.

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## CO-PARENTING – NEGOTIATING WITH THE OTHER PARENT

- Develop a businesslike relationship.
- Maintain your independence.
- Respect the other person's independence.
- Keep your feelings in check.
- Keep your communication focused.
- Communicate directly and openly with the other parent.
- Pick a good time to negotiate.
- Listen first.
- Give your view respectfully.
- Think of mutually beneficial solutions.
- If it is impossible to negotiate seek to call upon professional mediation or seek legal redress.

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## BEING A SINGLE PARENT – THE CHALLENGES

- Work constructively with the other parent.
- Be organised.



- Maintain the quality of your parenting.
- Seek the support you need.

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## WHEN YOU ROW EVERYTIME YOU MEET THE OTHER PARENT

- Organise the handover of children in a public place.
- Deliver rather than collect the children.
- Communicate important information in writing, but keep it factual.
- Avoid using the children as message carriers.
- If difficulties persist, seek professional help - a family counsellor or a mediator.

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## WHEN THE OTHER PARENT IS UNRELIABLE

- Try and discuss the issues and negotiate a different arrangement that suits everyone.
- Negotiate a plan B with the children - how long the children will wait for the live away parent to arrive and what alternative activities are available should the promised arrival not occur.
- If the other parent drifts out of the children's lives be sensitive to the children's feelings.

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## BEING A LIVE AWAY PARENT

- Live away parents need to create a successful environment in which they work with their former partner to have regular quality contact with their children, and are a positive influence as the children grow up.
- Co-operate with your former partner in a businesslike manner for the sake of the children.

- Keep your promises.
- Be a responsible parent.
- Be creative about how to stay in touch: by e-mail; social media; phone; snail mail.
- Don't be disheartened by rejection.
- Be patient in restarting contact.

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## NEW RELATIONSHIPS & STEP FAMILIES

- Reassure the children repeatedly, by word and deed, that dating doesn't affect your love for them or mean they are taking second place.
- If you are dating, then there is even more need for you to set aside special time to remain well connected with your children.
- Take it slowly.
- It has to be a package deal.
- Children shouldn't be present when you are dating a new person.
- It's best early on that dating takes place outside the home and only in the home if the children are away.
- Give your children plenty of time to get used to the idea that you have a new partner before the first face-to-face meeting takes place.
- When your children have met your new partner, be open to their opinions and listen to what they have to say about the new person.

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## STEP FAMILIES – WHAT THE ADULTS CAN DO TO HELP

### **The custodial parent**

- Take it slowly and be understanding.
- Support you children's relationship with the other parent.
- Be sure you spend individual time with your children.
- Work on developing a good relationship with your new partner.

## **THE LIVE AWAY PARENT**

- Accept the role of the new step parent in your children's lives.
- Maintain your own support and involvement.

## **THE NEW STEP PARENT**

- Take time to build relationship with your partner's children.
- Initially become a supportive friend to your new step children.
- Do not get too involved initially in discipline.
- Work on developing a good relationship with your new partner.
- It is likely that new rituals, rules and ways of behaving will have to be developed.
- It is really important to set aside time for the new family members to talk, share and get to know one another.

## **ADR: MEDIATION & ALTERNATIVE DISPUTE RESOLUTIONS**

We have a strong commitment to the non confrontational approach to the practice of family law. We believe that confrontation is harmful not only to the parties but has a detrimental effect on children.

There are a number of different forms of dispute resolution mechanisms.

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### **ADR, ALTERNATIVE DISPUTE RESOLUTION – WHAT DOES IT MEAN?**

Before going down the Court route, Alternative Dispute Resolution (ADR) should be considered.

Basically, ADR is an alternative to having a Court make all the decisions.

We advocate, where possible and in the best interests of all concerned, taking a route which saves both the expense and stress involved.

In sensitive family law matters ADR does not add to the conflict in question, where a Court situation can. It is a less stressful method for the individuals who are already involved in stressful situation.

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## WHAT IS ADR?

One of the criticisms made of the family law system is that there is no system or process for trying to negotiate solutions to problems other than in the context of Court proceedings.

This is where ADR comes in.

A starting point in an ADR approach is to deal with family disputes is by way of negotiation between the parties resulting in a Separation or a Mediation Agreement.

When Proceedings are issued, negotiations can still happen between Solicitors that can result in a settlement of the case and that settlement being made an Order of the Courts.

At Lynch Solicitors , we can also offer mediation and structured negotiations as an options for our Clients.

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## WHAT IS MEDIATION?

Mediation is a swift, cost efficient method of dispute resolution. It is based on the principle that people can resolve their own disagreements if given the right support. Mediation is a non-adversarial method of dispute resolution, one which facilitates the wishes of all parties involved in order to produce an appropriate result.

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## WHAT IS A MEDIATOR?

A mediator is not the decision maker but an independent, third party to the process. The function of a mediator is to facilitate a resolution between the parties. A mediator does not judge who is right or who is wrong, but works with parties to help them arrive at a solution to satisfy their interests. The mediator in a case will always remain impartial and act for all parties objectively.

John M. Lynch is an Accredited Mediator and often meets with people who are in dispute. His function at Mediations is to aid an agreement between the parties, not to decide the outcome for them. There can be two separate rooms for the parties and if they are working well they can be brought together to deal with their dispute in a civil way. One of the advantages of mediation is that the decisions are made by the parties themselves and this affords the parties much more flexibility than a Court hearing.

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## WHY CHOOSE MEDIATION?

Mediation provides a confidential, quicker, more cost effective and more satisfactory outcome than going to Court. An outcome can be achieved in the course of a DAY! It may take months and sometimes years to resolve a disagreement in Court. Mediation can be paced according to the parties' needs

and schedule. Mediation is voluntary and requires both parties agreement to the make a final resolution.

In mediation, the parties are able to customise the resolution agreement to meet their needs rather than being constrained by the limited options available in Court. Most importantly, parties are more likely to preserve an amicable relationship in the future, particularly because of the confidentiality of mediation.

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## DO YOU HAVE TO USE MEDIATION?

The Mediation Act 2017 now makes it mandatory to offer mediation as an alternative to litigation.

In all Divorce and Judicial Separation Proceedings, all Solicitors are obliged to file a certificate advising the Court that they have advised on Mediation.

The Court will not deal with the proceedings unless and until this certificate is filed.

We regularly mediate in custody/access situations and achieve a parenting plan which is in essence a mediated agreement between the parties.

By going down the route of Mediation, families start trying to resolve their dispute earlier than if they wait for settlement discussions on the day of their hearing in Court.

Make sure that you are happy to mediate, that you understand the process.

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## IF YOU SIGN A MEDIATION AGREEMENT, IS IT LEGALLY ENFORCEABLE?

If you decide that it is enforceable , it is enforceable.

However , if you go to Court to enforce it , the Court has power to override it:

- If it does not adequately protect the rights of both parties.
- If there is not full disclosure of assets.
- If a party is unduly influenced or overborne, or
- In the case of children, their best interests are not considered .

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## DO WE HAVE TO TRY ADR?

There is no obligation to engage in Alternative Dispute Resolution.

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## WHAT IS THE STRUCTURED NEGOTIATIONS APPROACH?

Structured Negotiations are a solution-driven advocacy and dispute resolution method conducted without litigation. What the structured negotiation process seeks to do is to establish ground rules for negotiation to enable parties to be clear about what they can expect from the process and also what is expected of them.

It usually involve pre agreed steps:

- Gathering and exchanging all information and documents relevant to the issues to be resolved. For example, if there are financial and property issues to be resolved, this phase may involve getting bank statements and a mortgage account statement. It may also involve getting a valuation of the family home.
- When all the relevant information and documents have been gathered and exchanged, looking at the possible settlement options. In the collaborative process this will involve a four way meeting. This is you and your legal representative and your spouse and his/her legal representative. This can be a useful exercise, particularly if there is more than one issue to be resolved. When time is set aside for the development of possible settlement options, new ideas about how to solve the issues may emerge.
- When the option-development phase has been completed, a settlement meeting is then arranged. The purpose of this meeting is to enable you and your spouse, with the assistance of your legal representatives, to reach an agreement in relation to all the various issues. In the collaborative process this will involve another four way meeting. In the

formal negotiation process the meeting may not be a face to face one - rather you and your spouse will be in adjoining rooms and the solicitors will engage in the face to face bargaining.

- If the bargaining phase of the negotiation process is successful, then the legal representatives will set out in writing the terms of the agreement reached. Depending on what is agreed, it may be necessary to go to Court to get orders by consent. Because the issues are agreed this is a very straightforward process.



## POSTSCRIPT – PRE-NUP OR COHABITATION AGREEMENT ?

### HOW ABOUT A PRENUPTIAL AGREEMENT?

Pre-nuptial agreements have been referred to as "an insurance policy against falling out of love".

A pre-nuptial agreement is entered into by a couple who are intending to marry. It sets out their rights to any property, debts, income and other assets purchased together. It also deals with assets they have brought into their relationship.

The agreement will set out how the parties will divide their assets and deal with their finances upon Divorce or Judicial Separation.

In addition to property and assets, an agreement can deal with issues such as succession rights, children, custody access, maintenance, and pension.

### WHY DO A PRE-NUPTIAL AGREEMENT?

Many parties enter into a Prenuptial Agreement to try and avoid a dispute upon separation.

Irish legislation allows the Family Law Courts to regard all assets of a married couple as being matrimonial assets and unless otherwise protected they may be thrown into a single financial pot.

A pre-nuptial agreement is made with the intention of contracting out of this scenario.

### WHO ENTERS INTO PRE-NUPTIAL AGREEMENTS?

Pre-nuptial agreements are not only entered into by the rich and famous. We regularly draft agreements for people from a variety of financial backgrounds.

Couples of a modest means are increasingly turning to pre-nuptial agreements in order to protect their assets.

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## ARE PRE-NUPTIAL AGREEMENTS ENFORCEABLE?

Contrary to the prevailing public view, pre-nuptial agreements are not illegal or unenforceable in Ireland.

An Irish couple is not prevented from signing a pre-nuptial agreement in Ireland, however the Irish Courts are not obliged to enforce such agreements if the couple's relationship later breaks down.

Therefore, it is crucial that you speak to us to allow us prepare a pre-nuptial agreement that contains all the essential factors so that it best protects your interests.

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## HOW ABOUT A COHABITATION AGREEMENT?

It is not uncommon for people to start new relationship after the breakdown of their marriage.

Other than making sure that they deal with the breakup of the marriage, it is important to regulate the new relationship.

A Cohabitation Agreement is an agreement between cohabitants to provide for financial and other matters during their relationship or at the end of the relationship (whether on death or otherwise).

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## WHAT IS THE MAIN DIFFERENCE BETWEEN A PRE-NUP AND A COHABITATION AGREEMENT?

A pre-nuptial agreement is entered into pre-marriage and a cohabitation agreement is entered into by parties who are not married, don't intend to marry, but are living together.

It is important that cohabiting couples give consideration to a Cohabitation Agreement and to the effects of the Civil Partnership Act 2010.

It sets out their rights to any property, debts, income and other assets purchased together. It also deals with assets they have brought into their relationship.

## HELPFUL ORGANISATIONS

- Knockanrawley Resource Centre, Counselling and Family Therapy Centre, Mary Street, Tipperary Town, Co. Tipperary. Telephone (062) 52688
- Accord, Marriage Counselling, Clonmel, Thurles, Tipp Town and Nenagh – 0504 22279
- Family Mediation Services – Mediate Ireland – 1 Dillon Street, Clonmel – 1890 917 791
- Cuan Saor- Women’s Refuge, Parnell Street, Clonmel, Co Tipperary  
Freephone:1800-576757
- Barnardos National Children’s Resource Centre, Christchurch Square, Dublin 8. Telephone: (01) 4549699
- Jigsaw – National centre for Youth Mental Health with branches all over the country – [www.jigsaw.ie](http://www.jigsaw.ie) or call 021 245 2500
- Rainbows National Office, Loreto Centre, Crumlin Road, Dublin 12  
Telephone : (01) 4734175 [www.rainbowsireland.com](http://www.rainbowsireland.com). For children and young people dealing with bereavement and Parental Separation
- The Family Support Agency, St. Stephens Green House, Earlsfort Terrace, Dublin 2.  
Telephone: (01) 611 4100      Fax: (01) 6760824  
[www.familysupport.agency@welfare.ie](mailto:www.familysupport.agency@welfare.ie)



## MEDIATORS IN IRELAND

### NON-SOLICITOR MEDIATORS

Name	Practice Areas	Subject Areas	Qualifications
Jacqueline Hogan	Tipperary	Family	B.Soc.Sc MSW CQSW CAST CCISD, Registered Mediator (MII)

### SOLICITOR MEDIATORS

Name	Practice Areas	Subject Areas	Qualifications
Tracey McGee	Tipperary	Family Law	
Mary C. Condell	Derry, Donegal, Down, Dublin, Fermanagh, Galway, Kerry, Kildare, Kilkenny, Laois, Leitrim, Limerick, Longford, Louth, Mayo, Meath, Monaghan, Offaly, Roscommon, Sligo, Tipperary,	Commercial, Company, Employment, Family, Partnership, Probate, Property	Law Society Cert Mediation & Conflict Intervention, The Mediators' Institute of Ireland (MII)

Tyrone,  
Waterford, West  
Meath, Wexford,  
Wicklow

Kenneth P. Heffernan	Antrim, Carlow, Cavan, Clare, Cork, Derry, Donegal, Down, Dublin, Fermanagh, Galway, Kerry, Kildare, Kilkenny, Laois, Leitrim, Limerick, Longford, Louth, Mayo, Meath, Monaghan, Offaly, Roscommon, Sligo, Tipperary, Tyrone, Waterford, West Meath, Wexford, Wicklow, Armagh	Employment, Family, Personal Injuries	The Mediators' Institute of Ireland (MII)
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John Maurice Lynch	Tipperary	Construction, Family, Personal Injuries, Property	Chartered Institute of Arbitrators
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Claire McCarthy	Clare, Cork, Kerry, Limerick, Tipperary, Waterford	Employment, Family, Personal Injuries, Probate, Property	Law Society Cert Mediation & Conflict Intervention
Brian McGill	Cork, Kerry, Tipperary, Waterford	Commercial, Employment, Family, Partnership, Probate	Friary Law
Catriona J. Murray	Carlow, Cork, Dublin, Kildare, Kilkenny, Limerick, Louth, Meath, Tipperary, Waterford, West Meath, Wexford, Wicklow	Employment, Family, Personal Injuries, Property	Law Society Cert Mediation & Conflict Intervention, The Mediators' Institute of Ireland (MII)
Sinead Nunan	Carlow, Clare, Cork, Dublin, Galway, Kerry, Kildare, Kilkenny, Laois, Limerick, Mayo, Roscommon, Tipperary	Commercial, Construction, Employment, Family, Personal Injuries, Probate, Property	Mediation Forum Ireland

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Martin J. O'Brien	Tipperary	Family	The Mediators' Institute of Ireland (MII)
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Fiona M.A. Twomey	Cork, Kerry, Tipperary, Waterford	Employment, Family, Partnership, Personal Injuries, Probate, Property
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## READING LIST

- When Parents Separate; Helping your Children Cope - John Sharry, Peter Reid and Eugene Donohoe ,Veritas.
- Mom’s House, Dad’s House; Making shared custody work, Isolina Ricci PHD Collier MacMillan Publishers London
- The Family Love it or Leave It, Tony Humphries, New Leaf.
- A Different Kind of Discipline, Tony Humphries, New Leaf.
- Achieving Emotional Literacy; Claud Steiner: Bloomsbury.
- Life and How to Survive it: Robin Syknner and John Cheese: Vermillion.
- A complete guide for parents who are separated, divorced or remarried. Isolina Rice PHD Published by Simon & Schuster
- The Heart of Parenting: Raising an Emotionally Intelligent Child; John Gottman, PH.D. ; Simon + Schuster

## GLOSSARY OF TERMS

**Applicant:** The spouse who starts the legal proceedings is called the Applicant and the spouse defending the separation or divorce is called the Respondent

**Contingency Pension:** A pension scheme in which a benefit is payable if the member dies while in relevant employment and before reaching normal pensionable age as provided for under the rules of the scheme - Otherwise known as a "death in service scheme".

**Decree:** A decision or judgment of a Court delivered on the final hearing of a matter – e.g. Decree of Nullity or a Decree of Divorce.

**Nullity:** A declaration by a Court that a person was never legally married.

**Pleadings:** The formal Court documentation in writing which sets out the grounds for bringing an action against another.

**Proceedings:** The term for the case before the Court. See Pleadings.

**Primary Carer:** The parent having the day to day responsibility for children.

**Respondent:** The spouse seeking the separation is called the Applicant and the spouse defending the separation is called the Respondent

**Retirement Pension:** A pension scheme in which a benefit is payable to the member spouse upon his/her retirement.

**Succession Right:** An automatic minimum right which one spouse is entitled to in relation to the estate of the other deceased spouse, in accordance with the Succession Act, 1965. Such a right depends on whether the deceased spouse died with or without a will.

**Trustees of a Pension:** Persons authorised by law to invest monies in order to provide for a pension benefit in the future.

Notes



**Tel:** 052- 612 43 44

**Address:** Jervis House,  
Parnell Street,  
Clonmel,  
Co Tipperary

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

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