

Judicial Separations

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Following marital breakdown, if a couple cannot resolve all outstanding family issues by agreement to facilitate permanent separation, each spouse can opt for family court proceedings. A Decree of Judicial Separation can be sought in the Circuit or High Court. Most Judicial Separation proceedings are determined in the Circuit Court but proceedings involving substantial assets are usually dealt with by the High Court. Under the Judicial Separation and Family Law Reform Act 1989 courts can grant a Separation Decree on various grounds, over 90% being granted because the spouses have not had “a normal marital relationship” for over 12 months and upon proof that their “marriage has broken down”. Adultery, unreasonable conduct or desertion can also be grounds for Judicial Separation.

The court must, in Judicial Separation proceedings, ensure that proper arrangements are made for children’s welfare, including arrangements for their custody and care and appropriate ongoing contact/access for the non-custodial parent. The court is also obliged to ensure “proper provision” is made for housing both spouses and children and for distribution of assets/income according to background family and financial circumstances. The court can make various orders for periodical maintenance payments (usually weekly or monthly), lump sum capital payments, property adjustment, life policy, pension adjustment and orders which terminate or preserve spouses’ inheritance rights. Depending on the asset and financial background, the court may determine that a family home be sold and the proceeds of sale divided to facilitate each spouse obtaining separate independent accommodation or, alternatively, grant one spouse the right to reside for his/her lifetime or a specified period of time in the home which the other must vacate.

Judges are required to consider a variety of factors including; duration of the marriage, income of each spouse, contribution each has made to the acquisition of assets by the other and to the other’s business dealings, health of each spouse and the contribution made by each in managing the home and caring for each other and their children. Resulting from legislation pioneered by me through the Oireachtas, the courts can no longer regard such work as less valuable than work done outside the home which directly generates income or assets.

The financial/asset outcome of Judicial Separation proceedings can rarely be predicted with total accuracy. Cases vary and judges have to apply their own judgment to specified principles and factors. Whilst the Supreme Court has emphasised outcomes should be fair and that no “unjust” court order should be made, those compelled to have their family assets and finances rearranged in Judicial

Separation proceedings are, unfortunately, to some extent engaged in a game of judicial roulette. It is, therefore, not only better but also much less expensive to resolve the consequences of marital breakdown in a Separation Agreement. Neither a separation agreement nor a judicial separation decree allows a spouse to remarry. For that a divorce is required.

The above article is by way of introductory information only. Every person's family circumstances and personal background differs and individual legal advice should be sought for guidance on individual family circumstances