

Marital Breakdown & Divorce

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It's an unfortunate fact that some marriages totally break down with no realistic possibility of a couple reconciling. As a result either a husband or a wife may seek a divorce.

To commence divorce proceedings, estranged spouses must be living apart from each other for four years. To ensure the law does not erect a barrier to possible reconciliation, where separated spouses resume cohabitation for less than 12 months and then again separate, the periods of separation before and immediately after the attempted reconciliation can be combined to comprise the four year separation period required.

Most Divorce cases are determined in the Circuit Court but those involving substantial assets are usually dealt with by the High Court.

Usually, a husband and wife have resided for four or more years in separate accommodation before commencement of Divorce proceedings. However, the courts have held that where a couple reside under one roof, if all marital intimacy between them has ended and they have ceased to interact and socialise together as a married couple, the period during which they have so resided together may be considered living apart for the purpose of obtaining a Divorce decree. For example, a couple resided in the same home for 10 years following complete marital breakdown because each wished to maintain a full relationship with their children. During this time they did not sleep together, eat meals together, or holiday together and each had on different occasions intimate relations with another person. The court accepted their motivation for continuing to reside under one roof, regarded them as leading separate and independent lives and granted the Divorce Decree.

Due to the four year separation requirement, most couples, before seeking a Divorce, resolve either by agreement or through Judicial Separation or other family court proceedings outstanding issues relating to children, finance, property and inheritance. However, when hearing a divorce application, the courts must ensure that arrangements exist to protect children's welfare and must also ensure that "proper provision" is or has been fairly made both for spouses and children appropriate to the overall family circumstances and financial background. As a result, on occasions, financial and property issues previously resolved may be re-opened. This is most likely to occur where there has been a substantial change in the financial circumstances of either spouse or where it is alleged that either did not make a true disclosure of their financial resources and property ownership at the time of the original separation.

Whilst spouses may retain their inheritance rights after concluding a Separation Agreement or following a Judicial Separation, a Divorce Decree automatically

terminates inheritance rights. If a wife is dependant on maintenance support from her husband for herself and/or for their children, it is often essential to review what life assurance and pension arrangements are in place to provide her with adequate protection should her husband predecease her. Frequently in Divorce proceedings, life policy and/or Pension Adjustment Orders are made to ensure that a wife has some financial security in future years.

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