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## **How can I legally separate from my estranged spouse?**

- A. By Deed of Separation, otherwise known as a Separation Agreement**
  - B. By applying to the Court for a Judicial Separation**
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### **A. Deed of Separation, otherwise known as a Separation Agreement**

#### **What is it?**

A Deed of Separation is a contract, prepared by your solicitor which, when signed by you and your spouse, becomes a legally binding document. The effect of a signed Deed of Separation is that you are legally separated from your Spouse and you and your Spouse no longer are obliged to reside with one another in the future.

#### **What does the Deed include?**

A Deed of Separation will specify and set out clearly spouses' rights and obligations towards one another. It will deal with matters such as custody and access (where there are children), maintenance obligations of one spouse towards the other and/or any child/ren, the ownership of the family home, the liability for the mortgage secured thereon, the ownership of any business interests and any other assets, the responsibility for debts and liabilities of either or both spouses, pensions, life policies and inheritance rights.

#### **How can the Deed be enforced?**

If, after a Deed of Separation is entered into, either spouse fails to comply with the terms of it, then an application to the Court can be brought by one spouse against the defaulting spouse seeking enforcement of it.

#### **Can the terms of the Deed be varied in the future?**

If a Deed of Separation is entered into by you and your spouse and there is a subsequent change in either of your circumstances, it is always open to you to make an application to a Court seeking an Order for an increase in maintenance against your spouse or to seek an Order for custody and/or access in respect of dependant children. No matter what is agreed in the Separation Agreement, you are not precluded from making such an application in the future. If, however, you wish to vary other aspects of the Deed of Separation, such as property and business interests, then this can be effected in two different ways: -

1. By further negotiation and agreement being reached with your Spouse resulting in an addendum to the Deed of Separation being entered into and/or
2. By your seeking Ancillary Orders from a Court upon Divorce proceedings being issued by either yourself or your Spouse. The extent, if any, to which such application will succeed cannot be predicted with certainty and is dependant upon the overall background circumstances of each case.

### **How do I start the process to conclude a Deed of Separation?**

There are two ways:

Firstly, you can attend mediation with your spouse and a qualified mediator. S/he will meet with you and your spouse for a number of meetings, which are likely to take place over a number of months, to discuss each other's proposals towards a resolution of matters, such as custody and access of children and the division of assets between you.

If mediation proves successful then the Mediator will draw up a Memorandum of Understanding, essentially a document containing the terms agreed between yourself and your spouse. You should not sign any document without first obtaining legal advice. The Memorandum of Understanding should be given by the mediator both to yourself and to your spouse and you should each return to your respective Solicitors at that stage to obtain legal advice on the document. The agreement will not become binding upon either of you until such time as your respective Solicitors have drawn up a Deed of Separation/Separation Agreement and until such time as that Deed of Separation has been signed by you and your spouse.

Secondly, if mediation does not prove successful or if one or both spouses do not wish to attend mediation, then you can negotiate the terms of a Deed of Separation with your spouse with the assistance of your respective Solicitors.

Both you and your Spouse will have to make full disclosure of your financial circumstances before entering into any negotiations or agreeing any terms of a Deed of Separation/Separation Agreement.

Once a Deed of Separation has been entered into by yourself and your Spouse it is not open to you to obtain a Judicial Separation from the Court.

### **B. Judicial Separation**

A Judicial Separation is granted by a Judge. Proceedings are instituted by one spouse against the other, to either the Circuit Court or the High Court, seeking a Decree (a Court Order) of Judicial Separation in respect of your marriage.

#### **When can I apply for a Judicial Separation?**

There are a number of grounds upon which the Court can grant a Decree of Judicial Separation, including the adultery of one party, desertion, unreasonable behaviour, on

the grounds that the applicant has been living separate and apart from the other spouse for 3 years prior to the institution of the proceedings. The most usual ground upon which the Court grants a Decree of Judicial Separation is that the marriage has broken down to the extent that there has been no normal marital relationship between the parties for in excess of one year prior to the institution of separation proceedings.

### **What Orders can be made by the Court?**

The Family Law legislation provides that, once a Decree of Judicial Separation has been granted by the Court, the Court can then make Orders such as custody and access, maintenance, lump sum, secured lump sum, transfers of property between spouses, transfers of pension benefits between spouses, assignments of an interest in life policies, extinguishment of inheritance rights and a conferral of the right on one spouse to reside in a property for his or her lifetime to the exclusion of the other spouse. It can also make Barring Orders and Safety Orders if one spouse and/or the children of the parties are encountering Domestic Violence. The Court can also direct one spouse to pay the costs of the other spouse of the proceedings.

The granting of a Decree of Judicial Separation by the Court does not automatically terminate the spouses' inheritance rights. It is at the Court's discretion as to whether either or both parties' inheritance rights should be extinguished by an Order of the Court.

It is also possible for the Court to make interim Orders, which are Orders made whilst the proceedings are ongoing and have not been fully heard. These can be Protection Orders or Interim Barring Orders, where there is a concern for the safety of a spouse and/or dependant child/ren. Such Orders can also be for maintenance, lump sums, custody and access. A Court can also make an Order directing that a report be produced by a suitably qualified professional, such as a psychologist or psychiatrist, on any question affecting the welfare of a dependant child or children, such as custody and access.

### **Can the Orders be varied in the future?**

If the Court grants a Decree of Judicial Separation and ancillary Orders, such as custody and access Orders in relation to your children or maintenance Orders, it is open to either you or your Spouse to seek to vary those Orders in the future where a serious issue arises affecting the welfare of the child or children or there is a change in the circumstances of either spouse. The most likely change in circumstances will be an increase or decrease in the amount of income available to either or both spouses necessitating an application to vary any maintenance Order made by the Court.

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