

FAMILY LAW

Law guide – How to get a divorce

Contents

Introduction.....	3
Mediation	5
The steps (by consent)	7
The steps (contested).....	13
Divorce documents on LawOnline	19
Other resources	21

Disclaimer

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Introduction

The purpose of this guide is to explain the divorce application process from beginning to end including a review of the documents required.

It is necessary to apply to the Circuit Court¹ to get a divorce whether or not both spouses are in agreement regarding the terms. This guide outlines the process under a number of different scenarios. You can make the application yourself or get a solicitor to do it for you. Once you meet the requirements (see below) there is nothing to prevent you from making this application, i.e. you do not need the permission or consent of your spouse.

One of the main concerns of the court will be to ensure both spouses and any dependent children are financially looked after – what is referred to as proper provision. The term ‘proper provision’ is not defined anywhere in the legislation.

The spouse who applies for the divorce is referred to as the ‘applicant’ and the other spouse then becomes the ‘respondent’.

Broadly there are three possible situations:

- Divorce by consent: where both parties are in full agreement regarding the terms of the divorce
- Contested divorce settled out of court: where the parties initially disagreed but come to an agreement without the need for a contested court hearing to finally settle the matter
- Divorce requiring a contested court hearing: where there is no agreement between the parties and the court is eventually required to settle the matter in a contested court hearing

To qualify for a divorce you must be able to meet the following basic conditions:

1. You and your spouse must be ‘living apart’ for at least two years during the previous three years. What represents a state of living apart is broadly defined and can include a situation where both spouses still live under the same roof. The Family Law Act 2019 states ‘...spouses who live in the same dwelling as one another shall be considered as living apart from one another if the court is satisfied that, while so living in the same dwelling, the spouses do not live together as a couple in an intimate and committed relationship, and a relationship does not cease to be an intimate relationship merely because it is no longer sexual in nature....’.
2. One spouse must be domiciled in the Republic of Ireland (this means having residence in the Republic of Ireland with the intention of living here permanently) or have lived in the country for one year before applying for a divorce.
3. There must be no prospect of a reconciliation.

¹ It is possible to apply to either the Circuit Court or the High Court. LawOnline’s documents are only suitable for the Circuit Court and the content of this guide therefore relates only to a Circuit Court application.

4. There must be proper provision for each spouse and any dependent children (it may require a court hearing to resolve this matter if there is no agreement between the spouses).

Mediation

Under the Mediation Act 2017 the parties to a dispute, including family-related matters, may engage in mediation as a means of attempting to resolve the dispute. Participation in mediation is voluntary at all times. The fact that proceedings may have been issued in relation to a dispute does not prevent the parties engaging in mediation at any time prior to the resolution of the dispute.

A party may:

- withdraw from the mediation at any time during the mediation,
- be accompanied to the mediation, and assisted by, a person (including a legal advisor) who is not a party, or
- obtain independent legal advice at any time during the mediation.

Agreement to mediate

Prior to the commencement of the mediation, the parties and the proposed mediator prepare and sign a document (referred to as an 'Agreement to mediate') appointing the mediator and containing the following information:

1. the manner in which the mediation is to be conducted;
2. the manner in which the fees and costs of the mediation will be paid;
3. the place and time at which the mediation is to be conducted;
4. the fact that the mediation is to be conducted in a confidential manner;
5. the right of each of the parties to seek legal advice;
6. the manner in which the mediation may be terminated;
7. such other terms (if any) as may be agreed between the parties and the mediator.

Confidentiality

All communications (including oral statements) and all records and notes relating to the mediation will normally be confidential and cannot be disclosed in any proceedings before a court or otherwise.

Exceptions to this include where disclosure:

- is necessary in order to implement or enforce a mediation settlement,
- is necessary to prevent physical or psychological injury to a party,

- is required by law, or
- is necessary in the interests of preventing or revealing the commission of a crime (including an attempt to commit a crime), the concealment of a crime or a threat to a party.

Enforceability of mediation settlements

A mediation settlement will have effect as a contract between the parties to the settlement except where it is expressly stated to have no legal force until it is incorporated into a formal legal agreement or contract to be signed by the parties.

A court may also, on the application of one or more parties to a mediation settlement, enforce its terms except where the court is satisfied that the mediation settlement:

1. does not adequately protect the rights and entitlements of the parties and their dependents (if any),
2. is not based on full and mutual disclosure of assets, or
3. is otherwise contrary to public policy, or
4. a party to the mediation settlement has been overborne or unduly influenced by any other party in reaching the mediation settlement.

Factors to be considered by court in awarding costs

In awarding costs in respect of situations where proceedings have already commenced a court may, where it considers it just, have regard to:

- any unreasonable refusal or failure by a party to the proceedings to consider using mediation, and
- any unreasonable refusal or failure by a party to the proceedings to attend mediation, following an invitation to do so.

The steps (by consent)

Where both parties are in full agreement the following are the steps that the applicant and respondent must take to apply for a divorce by consent. One party must still act as the applicant and make the actual application.

Choice of court venue

The parties need to identify the appropriate court venue to which the applicant spouse will make their application. The applicant or the respondent must reside, or work, within the jurisdiction, i.e. the geographic area, of the Circuit Court where this application is to be filed. There are eight court circuits – Dublin, Cork and six others which in turn cover a number of counties each.

Overview of the process

The following are the main steps to be taken in applying for a divorce by consent:

1. The applicant files the application with the court.
2. The applicant confirms to the court that a copy of the application was provided to the respondent.
3. The respondent confirms to the court that he/she received the application.
4. Both parties confirm their agreement to the settlement terms and any court orders they wish to apply for.
5. Both parties disclose their financial status.
6. If there are dependent children a statement relating to their care etc. is prepared.
7. Both parties confirm that they have considered other alternatives to a divorce.
8. One of the parties applies for a court hearing date, confirming any orders that will be applied for, and swears an affidavit exhibiting the terms of agreement.
9. A court date is set for the application and is heard by the court.

Documents required

The application form

The family law civil bill is basically the application form. It contains two sections – the ‘Indorsement of claim’ and the ‘Applicants claim’. This document is included in [Application for divorce by consent](#).

The indorsement of claim is where the applicant sets out the details of the marriage as he or she knows them.

The applicant’s claim section is used to list any orders, including ‘ancillary reliefs’, which both parties have agreed to apply for to the court. Ancillary reliefs are court orders relating to the financial affairs of the parties.

These orders typically relate to some or all of the following: maintenance, the family home, other property and assets, custody, succession rights, personal safety and the safety of children, and pensions. If the divorce is contested the court will decide the specific details of each order it decides to grant whereas if there is full agreement between the two parties the applicant can provide the details of what has been agreed.

The court will then decide whether or not to agree to these requests.

Confirmation that the applicant has informed their spouse

The court will require formal confirmation that the applicant has informed their spouse of their application for divorce. This is done by completing an Endorsement and statutory declaration of service. This document must be sworn, i.e. signed, in the presence of a commissioner for oaths or a practising solicitor. Most solicitors' firms offer this service and charge around €10.

The financial position of the applicant and respondent

Both parties are required to provide an affidavit of means – see Affidavit of means – applicant and Affidavit of means – respondent.

Basically this document sets out one's financial position, i.e. assets, liabilities, income and pensions, if any. It also asks for details of one's day-to-day living expenses.

Given that a key role of the court is to ensure that all parties – the spouses and any dependent children – will be properly catered for financially this document is key to providing the court with a complete picture of your financial situation.

Because this document is an affidavit it needs to be signed in the presence of a commissioner for oaths or a practising solicitor. Most solicitors' firms offer this service and charge around €10.

The welfare of children

If there are dependent children of the marriage both parties need to complete an affidavit of welfare.

This document requires details about the care and health etc. of the children. Children, for this purpose, are defined as any born to or adopted by either spouse. It also includes children to whom either party is in loco parentis.

If the respondent agrees with content of the applicant's affidavit (see Affidavit of welfare - applicant) then there is no need for the respondent to also provide the same detail – their affidavit can simply refer to the applicant's version and confirm their agreement with its contents (see Affidavit of welfare - respondent).

Because this document is an affidavit it needs to be signed in the presence of a commissioner for oaths or a practising solicitor. Most solicitors' firms offer this service and charge around €10.

Respondent's entry of an appearance

This is a very short document confirming that the respondent has received the family law civil bill and is thus fully aware of the divorce application. See [Entry of appearance for a divorce](#).

Confirmation that alternatives to divorce have been considered

Both parties must provide this short certificate, signed by the parties or by their solicitor if legally represented. This short document essentially confirms that one is aware of the alternatives to applying for divorce, e.g. mediation, separation etc. See [Certificate for a divorce – applicant](#) and [Certificate for a divorce – respondent](#).

Agreement of settlement terms and any orders to be applied for

This document is signed by both parties confirming their agreement to the settlement terms and any orders that they may wish to apply to the court for. See Application for divorce by consent which includes this document.

Grounding affidavit

This affidavit is signed by the party issuing the notice of motion below. The terms of agreement and any consent orders must be 'exhibited' (i.e. attached to the affidavit) also. This document must be sworn, i.e. signed, in the presence of a commissioner for oaths or a practising solicitor. Most solicitors' firms offer this service and charge around €10. See Application for divorce by consent which includes this document.

Notice of motion

A motion is simply a request to the court by the person submitting the motion. This motion is a request to the courts service to consider and, hopefully, grant the application for divorce, and any related orders applied for, on a date to be provided by the courts service. See Application for divorce by consent which includes this document.

Confirmation that the other party has been of informed of the notice of motion

The court will require formal confirmation that the other party has been informed of the above motion. This is done by completing an Endorsement and statutory declaration of service. This document must be sworn, i.e. signed, in the presence of a commissioner for oaths or a practising solicitor. Most solicitors' firms offer this service and charge around €10.

Possible other documents required

Separation agreement

If the parties have previously separated it is possible that a [Separation agreement](#) (also called a 'Deed of separation') was drafted and agreed at that time. If there is such a document a certified copy must be filed in the court by the applicant with their family law civil bill (see [Application for divorce by consent](#)).

Deed of waiver (family home and other property)

Protection is provided for the family home of a married couple under the Family Home Protection Act 1976. The effect of this legislation is to prevent one spouse from acting in

relation to the family home without the consent of the other spouse. The purpose of this Deed of waiver is to remove any doubt that this 'veto' by one spouse over the other is removed in relation to any future dealings in any property following a divorce, judicial separation or the execution of a deed of separation, i.e. a Separation agreement.

Pension adjustments

The terms of a divorce can include changes to the manner in which the benefits of either of the party's pension schemes, if relevant, are paid out. Any changes to a pension scheme requires a court order, called a Pension adjustment order. If the parties are in agreement then the pension adjustment order(s) can be prepared at the time of the divorce application for consideration by the court.

Notice to pension scheme trustees

This document is used to notify the trustees of any relevant pension scheme, or schemes, in respect of which the applicant is applying for a court order to change the manner in which future benefits are to be paid out. See Notice to trustees of pension scheme.

Notification to pension fund trustees of notice of motion

When the consent orders include an application to vary the terms of pension scheme benefits the Notice of motion must also be served on the relevant pension fund trustees and service must be confirmed using Endorsement and declaration of service on trustees.

Previous court orders

If either party has previously applied to the courts for any orders relating to the marriage or family, including an application for a decree of judicial separation, then any orders previously made by the courts must also be attached to the family law civil bill (see Application for divorce by consent) when it is filed at the relevant Circuit Court office.

Filing of the documents with court

All of these documents must be filed (original and two copies) with the relevant Circuit Court office. Given that this is a divorce by consent it is possible that all of these documents can be filed at the same time with the relevant Circuit Court office.

The steps (contested)

The following are the steps to be taken by the applicant and respondent where the divorce is contested, i.e. there is no agreement between the two parties on the terms of the divorce.

Choice of court venue

The applicant needs to identify the appropriate court venue to which he or she will make their application. The applicant or the respondent must reside, or work, within the jurisdiction, i.e. the geographic area, of the Circuit Court where this application is to be filed. There are eight court circuits – Dublin, Cork and six others which in turn cover a number of counties.

Overview of the process

The following are the main steps to be taken in applying for a contested divorce:

1. The applicant files the application with the court.
2. The applicant gives (serves) a copy of the application to the respondent.
3. The applicant confirms that a copy of the application was provided to the respondent.
4. The respondent confirms that he/she received the application.
5. The respondent files a defence and counterclaim with the court and gives a copy to the applicant.
6. If there are dependent children, a statement relating to their care etc. is prepared.
7. Both parties confirm that they have considered other alternatives to a divorce.
8. Both parties disclose their financial status.
9. Any queries in relation to the financial information provided are resolved.
10. The courts service attempts to resolve as many outstanding issues as possible.
11. If agreement is reached, terms of settlement are drafted and a date is set for the court to hear and rule on the agreement.
12. If there is no agreement a court date is set for a contested hearing and judgment.

Documents required from the applicant

A. *The application form*

The Family law civil bill is basically the application form. It contains two sections – the ‘Indorsement of claim’ and the ‘Applicants claim’.

The indorsement of claim is where the applicant sets out the details of the marriage as he or she knows them.

The applicant's claim section is used to list any orders, including 'ancillary reliefs', which the applicant wishes to apply for to the court. Ancillary reliefs are court orders relating to the financial affairs of the parties.

These orders typically relate to some or all of the following: maintenance, the family home, other property and assets, custody, succession rights, personal safety and the safety of children, and pensions. Where a divorce is contested the court will decide the specific details of each order it decides to grant.

B. Confirmation that the applicant has informed their spouse

The court will require formal confirmation that the applicant has informed their spouse of their application for divorce. This is done by completing an Endorsement and statutory declaration of service. This document must be signed in the presence of a commissioner for oaths or a practising solicitor. Most solicitors' firms offer this service and charge around €10.

C. The financial position of the applicant

The applicant is required to provide an Affidavit of means - applicant.

Basically this document sets out their financial position, i.e. assets, liabilities, income and pensions, if any. It also asks for details of their day-to-day living expenses.

Given that a key role of the court is to ensure that all parties – the spouses and any dependent children – will be properly catered for financially this document is key to providing the court with a complete picture of your financial situation.

Because this document is an 'affidavit' it needs to be signed in the presence of a commissioner for oaths or a practising solicitor. Most legal firms provide this service for c. €10.

D. Confirmation that alternatives to divorce have been considered

Both parties must provide this certificate, signed by the parties or by their solicitor if legally represented. This short document essentially confirms that you are aware of the alternatives to applying for divorce, e.g. mediation, separation etc. See Certificate for a divorce - applicant.

Possible other documents required from the applicant

E. The welfare of children

If there are children of the marriage the applicant needs to complete an Affidavit of welfare - applicant. This document requires details about the care and health etc. of the children. Children, for this purpose, are defined as any born to or adopted by either spouse. It also includes children to whom either party is in loco parentis to.

Because this document is an 'affidavit' it needs to be signed in the presence of a commissioner for oaths or a practising solicitor. Most legal firms provide this service for c. €10.

F. Notice to trustees of pension scheme

This document is used to notify the trustees of any relevant pension scheme, or schemes, in respect of which the applicant is applying for a court order to change the manner in which future scheme benefits are to be paid out, that such an application is being made. See Notice to trustees.

G. Separation agreement

If the parties have previously separated it is possible that a Separation agreement (also called a 'Deed of separation') was drafted and agreed at that time. If there is such a document it must be filed in the court by the applicant with their Family law civil bill.

H. Previous court orders

If either party previously applied to the courts for any orders relating to the marriage or family, including an application for a decree of judicial separation, then any orders previously made by the courts must also be attached to the Family law civil bill when it is filed at the relevant Circuit Court office.

Filing of documents by the applicant

Once the Family law civil bill is drafted and signed it must be 'issued' by the relevant Circuit Court office. To issue the bill the office stamps, dates and allocates a reference number (the record number) to it.

Any previously agreed separation agreement and/or court orders granted must also be attached.

The applicant should bring three copies of the family law civil bill to the Circuit Court office - one to be kept on file at the court, one for your records and one to be served on the respondent. Two stamped copies are returned to the applicant and the original signed versions is retained by the court office.

The applicant then serves the issued Family law civil bill on the respondent.

Documents required from the respondent

A. Entry of an appearance

This is a very short document confirming that the respondent has received the family law civil bill and is thus fully aware of the divorce application. See Entry of appearance for a divorce.

B. Defence and counterclaim

The respondent replies to the family law civil bill by preparing a Defence and counterclaim. It essentially contains three sections – the ‘Defence’, the ‘Counterclaim’ and the ‘Respondent’s claim’.

In the first section, called the defence, the respondent, if he/she wishes, can challenge the claims made by the applicant in the indorsement of claim section of the applicant's Family law civil bill.

The counterclaim section is where the respondent sets out the details of the marriage as he or she knows them.

The respondent’s claim section is used to list any orders, including ‘ancillary reliefs’, which the respondent wishes to apply for to the court. Ancillary reliefs are court orders relating to the financial affairs of the parties.

These orders typically relate to some or all of the following: maintenance, the family home, other property and assets, custody, succession rights, personal safety and the safety of children, and pensions. Where a divorce is contested the court will decide the specific details of each order it decides to grant.

C. The financial position of the respondent

The respondent is required to provide an Affidavit of means - respondent. Basically this document sets out the respondent’s financial position, i.e. assets, liabilities, income and pensions, if any. It also asks for details of their day-to-day living expenses.

Given that a key role of the court is to ensure that all parties – the spouses and any dependent children – will be properly catered for financially this document is key to providing the court with a complete picture of the respondent’s financial situation.

Because this document is an ‘affidavit’ it must be signed in the presence of a commissioner for oaths or a practising solicitor. Most legal firms provide this service for c. €10.

D. Confirmation that alternatives to divorce have been considered

Both parties must provide this short certificate, signed by the parties or by their solicitor if legally represented. This short document essentially confirms that the respondent is aware of the alternatives to applying for divorce, e.g. mediation, separation etc. See Certificate for a divorce - respondent.

Possible other documents required from the respondent

E. The welfare of children

If there are children of the marriage the respondent must complete an Affidavit of welfare - respondent. This document requires details about the care and health etc. of the children. Children, for this purpose, are defined as any born to or adopted by either spouse. It also includes children to whom either party is in loco parentis to.

If the respondent agrees with content of the applicant's affidavit then there is no need for the respondent to also provide the same detail – their affidavit can simply refer to the applicant's version and confirm their agreement with its contents.

Because this document is an 'affidavit' it needs to be signed in the presence of a commissioner for oaths or a practising solicitor. Most legal firms provide this service for c. €10.

F. Notice to trustees of pension scheme

This document is used to notify the trustees of the relevant pension scheme, or schemes, in respect of which the respondent is applying for a court order to change the manner in which the scheme benefits are to be paid out, that such an application is being made. See Notice to trustees.

Filing of documents by the respondent

The respondent must file their Entry of appearance with the relevant Circuit Court office within ten days of receiving the Family law civil bill. If respondent intends to defend the matter they must then file their Defence and counterclaim, ideally along with all of the other documents mentioned above, within a further ten days. Their affidavit of means and defence and counterclaim can, however, be filed with their appearance if these documents are to-hand.

If time is an issue it is possible for the respondent to be given more time if this is agreed with the other spouse or else allowed by the court.

Case progression

Once the respondent has filed all of their documents a process called 'case progression' begins. This is an arrangement whereby the courts service attempts to resolve as much of the outstanding issues as possible before the matter goes to a hearing (or is possibly resolved in its entirety).

The case will be listed, not later than 70 days after the date the Defence and counterclaim is filed, for a case progression hearing before the County Registrar.

The purpose of case progression is to reduce delay and cost and ensure that the time and other resources of the court are employed effectively. Once this process is complete, the matter is listed for hearing, or ruling in the event of eventual agreement, before a judge.

Discovery

The court rules allow either party to ask the other to 'vouch', i.e. prove the accuracy of, any or all items listed in their affidavit of means (applicant or respondent). In a contested case, where there may not be a high degree of trust, it is not unusual for either side to make such requests of each other.

Further progress in resolving the case must generally wait until both sides are satisfied with the responses they have received – however, the degree and depth of investigation embarked upon must also be 'reasonable' relative to the requirements of the case.

Final steps

A contested case is finally resolved either through agreement, i.e. it is settled out of court, or a contested court hearing. These two possible scenarios are explained below:

Settlement out of court

Where both parties were in disagreement at the outset of proceedings but eventually come to an agreement an application for a divorce by consent can be made. This application requires the following additional documents:

1. Consent orders and terms of agreement: This document is signed by both parties confirming their agreement to the settlement terms and any orders that they may wish to apply to the court for.
2. Grounding affidavit: This affidavit is signed by the party issuing the notice of motion below. The terms of agreement and any consent orders must be 'exhibited' in the affidavit (i.e. attached to the affidavit). This document must be sworn, i.e. signed, in the presence of a commissioner for oaths or a practising solicitor. Most solicitors' firms offer this service and charge around €10.
3. Notice of motion: This motion is a request to the court to consider and, hopefully, grant the application for divorce, and any related orders applied for, on a date to be provided by the courts service.
4. Endorsement and statutory declaration of service on spouse: A sworn declaration is required to be made by the party issuing the above motion that the other spouse has been informed and served with a copy of the motion.
5. Endorsement and statutory declaration of service on trustees: Where an application is being made for the variation of pension fund benefits this document is required to confirm that the notice of motion has also been served successfully on the relevant pension fund trustees.

See Consent orders, ground affidavit and notice of motion which includes items 1 to 3 above.

If the court is satisfied that the relevant conditions have been met, including provision for any dependents and the respective spouses in the agreement, it should grant the decree and also make the agreement a rule of court.

Contested hearing

If the parties remain in disagreement with no prospective of a resolution, the applicant can apply for a trial date to be set so that the court can consider and judge on the matter.

The document used to make this application is the Notice of, or to fix, a date for trial (the process for arranging this date differs in Dublin versus the rest of the country).

This document is normally prepared and issued by the applicant. However, if the applicant fails to do so within ten days of receiving the respondent's Defence and counterclaim document, the respondent then has the option of making the trial arrangements instead, also using this document.

Divorce documents on LawOnline

This section outlines brief details of the documents that may have to be prepared in the course of a divorce application. Not every document listed here is required in every case, depending on whether or not the case is contested, and whether there are dependent children, property, pension adjustments etc.

If you want to get more details on any of these you should click on the links which will bring you to the document itself on LawOnline. Each document contains extensive 'Guidance notes' and most questions also include an 'Explanation' box. You can try any of these documents for free – click on 'Try for free'.

These documents are also available in pack form allowing you to buy all of the documents you need at a one-off reduced cost.

Affidavit of means - applicant (FL010)

The document is used to disclose the financial position of the applicant who is required to provide details of their assets, liabilities, income and pensions as applicable. They must also provide details of their living expenses.

Affidavit of means - respondent (FL020)

The document is used to disclose the financial position of the respondent who is required to provide details of their assets, liabilities, income and pensions as applicable. They must also provide details of their living expenses.

Affidavit of welfare - applicant (FL011)

This document is only required if there are dependent children of the marriage. It sets out details of the children, their day-to-day care and living arrangements and any health issues etc.

Affidavit of welfare - respondent (FL019)

This document is only required if there are dependent children of the marriage. It sets out details of the children, their day-to-day care and living arrangements and any health issues etc. If the respondent agrees with content of the applicant's affidavit then there is no need for the respondent to also provide the same detail – their affidavit can simply refer to the applicant's version and confirm their agreement with its contents.

Agreement to mediate on a family law matter (FL012)

Under the Mediation Act 2017 the parties to a dispute, including family-related matters, may engage in mediation as a means of attempting to resolve the dispute. Participation in mediation is voluntary at all times. The fact that proceedings may have been issued in relation to a dispute does not prevent the parties engaging in mediation at any time prior to the resolution of the dispute. Prior to the commencement of the mediation, the parties and the proposed mediator prepare and sign a document (referred to as an 'agreement to mediate') appointing the mediator and containing specific information such as how the process is to be conducted, terminated and paid for amongst a range of other matters.

Application for divorce by consent (FL004)

This is essentially the application form which the applicant uses to apply for a divorce by consent and any related court orders. The divorce process is begun when the family law civil bill is filed at the Circuit Court office and a copy is given to the respondent spouse. In addition to the family law civil bill this document also includes the consent orders and terms of agreement, the notice of motion to apply to the court as well as the affidavit required to ground this notice of motion.

Certificate for divorce or judicial separation – applicant (FL018)

This document is required to be completed by the applicant, or their solicitor if they are legally represented. This certificate essentially confirms that they are fully aware of the various alternatives available such as mediation or a separation agreement versus applying for a judicial separation or divorce as the case may be.

Certificate for divorce or judicial separation – respondent (FL022)

This document is required to be completed by the respondent, or their solicitor if they are legally represented. This certificate essentially confirms that they are fully aware of the various alternatives available such as mediation or a separation agreement versus applying for a judicial separation or divorce as the case may be.

Consent orders, grounding affidavit and notice of motion (FL006)

Where both parties were in disagreement at the outset of proceedings but then come to an agreement this document can be used to specify the details of that agreement and any court orders which both parties have agreed to apply for. In this circumstance the latter are referred to as consent orders. Also included is the notice of motion to apply to the court as well as the affidavit required to ground this notice of motion.

Deed of waiver for divorce or separation (FL013)

Protection is provided for the family home of a married couple under the Family Home Protection Act 1976. The effect of this legislation is to prevent one spouse from acting in relation to the family home without the consent of the other spouse. The purpose of this deed of waiver is to remove any doubt that this 'veto' by one spouse over the other is actually removed in relation to any future dealings in any property following a divorce, judicial separation or the execution of a deed of separation, i.e. a separation agreement.

Defence and counterclaim for divorce or judicial separation (FL009)

When a divorce is contested this document is used by the respondent to reply to the applicant's family law civil bill. The respondent can challenge any of the claims made by the applicant and can also apply for any related court orders that they require.

Endorsement and statutory declaration of service on spouse (FL007)

This document is used to confirm to the court that the respondent has been given the family law civil bill and is thus fully aware that the divorce application has been made. It can also be used to confirm that the non-filing spouse has been served with a notice of motion. It must be signed, i.e. sworn, in the presence of a commissioner for oaths or a practising solicitor.

Endorsement and statutory declaration of service on trustees (FL023)

Where an application is being made for consent orders which include the variation of pension fund benefits this document is required to confirm that the notice of motion has been served successfully on the relevant pension fund trustees.

Entry of appearance for divorce or judicial separation (FL008)

The purpose of this document is to inform the court that the respondent is acknowledging receipt of the family law civil bill. Where relevant, it is also used to inform the court that the respondent intends to defend the proceedings.

Family law civil bill (contested) (FL005)

This is essentially the application form which the applicant uses to apply for a divorce and any related court orders. The divorce process is begun when this document is filed at the Circuit Court office and a copy is given to the respondent spouse. This version is suitable for a divorce application where there is disagreement between the parties and the divorce is contested.

Notice of motion for order in agreed terms (FL016)

Where the parties have agreed to separate and have executed a separation agreement which includes terms relating to the payment of maintenance and/or property it is also possible to apply to have the agreement ruled on by the court and to use this document to request a court hearing time and date for that purpose.

Notice of or to fix a date for trial (FL017)

This document is used to arrange the trial date on which the court will hear a divorce application in a contested situation. The process differs depending on whether or not the relevant Circuit Court circuit is Dublin or elsewhere. This document is normally prepared and issued by the applicant. However, if the applicant fails to do so within ten days of receiving the respondent's defence and counterclaim document, the respondent then has the option of making the trial arrangements instead using this document.

Notice to trustees of pension scheme (FL014)

This document is used to notify the trustees of any relevant pension scheme, or schemes, in respect of which the applicant or respondent is applying for a court order to change the manner in which the scheme benefits are to be paid out, that such an application is being made.

Pension adjustment order (FL015)

This document, called a pension adjustment order (PAO), is used to notify the trustees of a pension scheme of the details of an adjustment to the payment of the scheme benefits as ordered by a court in the context of divorce and judicial separation proceedings. It is prepared by the intended beneficiary, either the applicant or respondent as the case may be, or their legal representatives for signing by the County Registrar.

Divorce by consent pack

This pack contains all of the documents required to apply for a divorce by consent.

Divorce or judicial separation pack (applicant)

This pack contains all of the documents required by the applicant in a judicial separation application.

Divorce or judicial separation pack (respondent)

This pack contains all of the documents required by the respondent in a judicial separation application.

Other resources

Circuit Court Rules

The rules and procedures to be followed in making a divorce application are laid down in the Circuit Court Rules and specifically Order 59.

The Acts

The legislation under which a divorce application is made is The Family Law (Divorce) Act 1996.

Glossary of terms

The following are some of the legal and other terms you may come across in the course of a divorce application with a brief explanation of each:

Affidavit: A sworn document setting out facts. It is used to give information to the court where oral evidence is not required.

Ancillary reliefs: Orders that a court can make in relation to the financial resources of the parties in addition to granting an application for judicial separation or divorce.

Appearance: A formal document served by the respondent on the applicant stating that he or she has received the family law civil bill. It can also indicate an intention to defend the case. A copy must be filed in the relevant court office. If no appearance is filed, the plaintiff can apply for judgment in default of appearance.

Applicant: The person who brings an application before the court. It is also used as an alternative to 'plaintiff'.

Call-over: A court hearing to decide the dates on which cases will be heard by the court.

Case progression hearing: The pre-trial hearing of a family law case before the county registrar to prepare the case for trial.

Circuit Court office: Circuit Court offices deal with the administration of the Circuit Court. They are open between 10.00 a.m. and 4.30 p.m. on normal working days. Many of the documents that pass between the parties in a Circuit Court case must be filed or issued in the Circuit Court office. Offices are usually in the principal courthouse in the county.

Court Rules: These are the general procedural rules used in the courts. They set out the way cases are dealt with. There are separate rules for the District Court, the Circuit Court and the Superior Courts (that is the High Court and the Supreme Court).

Decree or order: The written order of the court setting out its decision

Dependent child: Any child of both spouses (or adopted by both spouses or in relation to whom both spouses are in loco parentis) or any child of either spouse (or adopted by either spouse or in relation to whom either spouse is in loco parentis) who is:

- under the age of 18
- under the age of 23 and receiving full time education or
- over 18 but has a mental or physical disability to such extent that it is not reasonably possible for the child to maintain himself or herself fully.

Deponent: This the person who swears an affidavit.

Exhibit: An exhibit is a document referred to in, and attached to, an affidavit. The deponent must sign the exhibit in the presence of a practising solicitor or commissioner for oaths.

Ex parte application: An application to court in the absence of, and without notice to, your spouse or other party.

In loco parentis: In the place of a parent. A person who is not the parent but assumes the responsibilities of a parent in respect of a particular child.

Issue: When the Circuit Court office stamps, dates and assigns a record number to a document this is referred to as issuing the document.

Judgment in default: A formal decision in favour of the applicant where the respondent has failed to do something within the proper time limit. It may, for example, be a failure to enter an appearance or file a defence.

Motion: An application to court for an order that something be done in favour of the party making the application. The other side is usually informed of the application but sometimes this is not necessary.

Oral evidence: What is said by witnesses to the court in response to questions put on behalf of the parties or by the judge. Generally, all divorce cases must be proved by oral evidence.

Pension adjustment order: This is the form used to apply to the court to change the manner in which future pension fund benefits are paid out. If the court agrees it becomes an order which the pension scheme trustees must implement.

Proper provision: This is term in the divorce legislation to describe the process of ensuring that all of the parties, i.e. both spouses and any dependent children, are properly looked after in any settlement or judgment. There is, however, no definition of what qualifies as proper provision.

Record number: The number assigned to the case by the court office. It is shown on the top right hand side of all documents filed in the office and should be quoted in all dealings with the office.

Respondent: The person against whom a motion is brought and is sometimes called the defendant.

Serve and service: When a case or a document is brought to the attention of the person named in it, e.g. the respondent, this is called serving the document and the process is referred to as service.

Spouse: Husband or wife, or former husband or wife.

Stay of execution: The suspension of the operation of a court order or judgment. When making an order or giving a judgment the court can stay the execution until such time as it thinks fit.

Swear: To swear an affidavit, you must bring it to a practising solicitor or commissioner for oaths and sign it in their presence and they must also sign to witness your signature. There will usually be a charge for this service.

Trustees: These are the individuals or entities who have responsibility for overseeing the administration and management of a pension fund.