



Family Law FAQ

Michael Monahan Solicitor

Question 1

What changes have taken place recently in family law when I apply for Divorce or Separation?

Answer: The courts dealing with Divorce or Separation are anxious to ensure proceedings are dealt with efficiently. Following the reduction in the amount of time necessary to be separated before applying for divorce the time necessary now is to 2 years separation. The courts are sympathetic to situation where a couple may have resided in the same house but effectively lived apart. The usual criteria for this is if one party moves out of the marital bedroom. This is taken by the courts as sign that from that time the marriage was effectively over and can be used as part of the above 2 year requirement.

Question 2.

Separate the different courts for different types of applications.

Answer: The District Court which is the lowest court deals with urgent matters such as protection orders, maintenance orders, custody orders and access to children of the marriage.

The Circuit Court deals with divorce and separation applications. As part of these applications however the above areas of law dealt with the District Court are also dealt with in the Circuit Court as matters which have to be sorted out when a couple separate.

Separation applications are only made where a couple wish to separate but have not got the two-year absence from each other as outlined above to qualify for divorce.

Question 3.

Is there an average cost as to what a divorce application will cost?

Answer: As there is no average case that cannot be an average in relation to how much time is involved in any Divorce or Separation case. Section 150 of the Legal Services Regulation Act 2015 point out the client must know at the start of proceedings what their exposure to legal costs is. This can be hard to estimate and it is best to work on a time basis which can be accounted for by the solicitor during the case. It is also possible to make payments by instalments during the case which provides cash flow for the solicitor firm and reduces the ultimate account at conclusion.

Question 4.

Can my ex-wife/husband get away with not paying the bills ?

We get asked this question all the time.

Spouse leaves Family Home sets up with new relationship and says they have little or no funds to meet their First Family obligations . The urgency of the matter requires immediate court application to District Court ,available daily in Dublin and weekly in country areas.

If the amount needed to keep house and family is above say €500 a week your application is to the Circuit Court.

In a separation situation a lot depends on who stays in the family home.If each party has their own income then both incomes will be taken into consideration if and when a court has to determine who should pay for which bill.

A court will need to see what the basic expenses are for maintaining two homes. If the person remaining in the house has their own income they will be expected to pay the house utility bills. The mortgage will have to be dealt with separately and now with Property Tax the extra expense will have to be factored in to any settlement. Each case will differ and be unique. The expense for children will be looked at as to what is required and what is optional.

If one party inherited the house before marriage a case may be made that it was not part of the marriage property however once it becomes the family home there is the presumption that the value should be shared. The court will strive to achieve a fair outcome between the need for a home and the fact that it was inherited by one of the parties before the marriage. Sometimes a division can be on a percentage basis between the parties say 60%/40 % to make allowance for this. It can be left until the youngest child is 18 before a division takes place.

One thing is certain two houses are more expensive to run than one.

For further advice Contact us [Here](#)

Question 5.

Is it all picture and no sound and you are separated and living in the same house?

This came up recently in a case where a couple decided they were not able to live together as Man and Wife and they applied for Legal Separation. As you may know a couple must apply for separation first before you can proceed any further towards a Divorce.

The legislation lays out quite clearly that for Divorce you must be separated for four over the past five years prior to the date of Application.

Understand the difference between Separation and Divorce. With Separation you're still in Law married to each other but the deed of Separation regulates the relationship between the two of you while you are living separate and apart.

Usually one party moves out of the property both resided in before they decided to separate. In that case it is quite clear that the parties did live separate and apart to qualify. In some parts of Ireland if the court deals with separation only they would ask that the couple would be living separate and apart from one year prior to the court application. This is not a hard and fast rule around the country it depends on different interpretations of the law by different judges. All of these cases are dealt with in the Circuit Court.

The issue which has come up is where two parties live separately but they've agreed that the marriage is broken down. They will not reconcile but may remain living in the same house and can that count for "living separate and apart" to meet the terms of the Act?

I've spoken to practitioners in relation to this issue and the general agreement is that living in separate bedrooms will be accepted by the court as living separately for the purposes of the required period of time under the legislation. If this is in dispute by either party it would seem it would be necessary for that party to give evidence to the satisfaction of the court that despite living in separate bedrooms the parties were not living separate lives.

Again each case is different. People's circumstances are different and indeed the way they come across to the impartial presiding judge who has to decide if they qualify under the legislation are all relevant factors.

One thing is certain if a couple are in difficulties and one party does not wish to stay in the marriage no Court will force them back into the marriage . A court may adjourn proceedings to allow discussion between the parties to see if some compromise can be arranged. The court will always facilitate delay to help parties go to [Counselling or Mediation](#). This may be a less stressful situation than a full court hearing with evidence been given about conduct in the marriage. Even though the hearing is in private it is not easy to have your personal life outlined to total strangers.



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