

# Judicial Separation – What You Need to Know

**When a marriage breaks down and there is no prospect of reconciliation, many couples opt for a judicial separation to agree the terms of living arrangements and access for children of the marriage, writes Grainne McMahon, Solicitor.**

A decree of judicial separation removes the obligation on a couple to co-habit. Where a marriage has irretrievably broken down, many couples opt for a judicial separation to sort matters between them before they apply for a divorce. It is useful where there are contentious matters surrounding access and maintenance regarding children, the transfer of property and the extinguishment of succession rights, for example. A couple must be living separate and apart for four out of the previous five years before they can apply for a divorce. That period can be lengthy for many couples and so, a judicial separation is helpful in resolving matters until a divorce can be applied for.

Either party in a separating couple can apply for a judicial separation. Before you can bring an application, the court must be satisfied that there are grounds for the application, the couple has been advised about counselling and mediation and also that proper provision has been made for the welfare of any dependents.

An application for a judicial separation must be based on one of the following six grounds:

- One party has committed adultery
- One party has behaved in such a way that it would be unreasonable to expect the other spouse to continue to live with them
- One party has deserted the other for at least one year at the time of the application

- The parties have lived apart from one another for one year up to the time of the application and both parties agree to the decree being granted

- The parties have lived apart from one another for at least three years at the time of the application for the decree (whether or not both parties agree to the decree being granted)

- The court considers that a normal marital relationship has not existed between the spouses for at least one year before the date of the application for the decree.

The latter is the most common one that we see in court as it does not put fault on either party.

Once the court is satisfied that the above are met, and that proper provision is made for the dependant spouse and children, it will grant a decree of judicial separation.

All hearings are in private and where possible, it is encouraged that the terms of the judicial separation are agreed between the parties and then submitted to the court, particularly where there are few or little contentious issues.

You should contact a solicitor specialising in Family Law who can advise you further. The above article is for information purposes only and should not be taken as legal advice.



*Grainne McMahon is a Solicitor and Attorney-at-Law (New York) specialising in family, employment, entertainment and data protection law. Email [grainnemcmahon@berwick.ie](mailto:grainnemcmahon@berwick.ie)*

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SOLICITORS

16 Eyre Square, Galway.  
091-567545 / 086-8152932  
[www.berwick.ie](http://www.berwick.ie)