



PLAIN ENGLISH GUIDE

DIVORCE

Separation and divorce is a very trying and emotional time for all involved. Your primary concern should be to look after yourself, and your family. The friendly and professional staff at Commins Hendriks Solicitors have a wealth of experience in handling divorces, and can help you through this difficult time

The Family Law Act does not take into account why the marriage broke down. The only ground for obtaining a divorce is that the marriage has broken down irretrievably.

To show the court that this has occurred, you must be separated for no less than 12 months. This does not have to be all at once, the court does allow for time to be counted before and after an attempted reconciliation, so long as the reconciliation period is not longer than 3 months.

You can also be considered separated even if you live under the same roof. In this case, you need to show the court that you were actually separated during this time. Independent evidence may need to be shown to prove this.

You can apply for a divorce wither on your own, or together with your spouse. You will need to show the court that:

1. You were married (you will need your marriage certificate)
2. That you have been separated for at least 12 months
3. That there is no hope of you reconciling.

If there are children of the marriage, or in the home who are under 18 the court will normally not grant a divorce unless proper arrangements have been made for their care and welfare.

Getting a divorce is not a quick process. Once you have lodged your divorce application with the court you will be given a date for hearing. This can be one or two months away. Unless you have made a joint application with your spouse, you will need to serve the application on your spouse at least 28 full days before the hearing. If you have children under 18, the person applying for divorce, must attend at the hearing to tell the court of the arrangements for the children.

The way the courts grant a divorce is by granting what is called a "decree nisi". This means your divorce has been granted, but is not final yet. One month after the decree nisi has been granted, the court will issue a certificate saying that the decree nisi has become absolute. This means you are now divorced. You are not permitted to remarry until a decree absolute has been given.

Once you obtain a divorce, you will need to think about your will. With divorce, a gift to a spouse that is made before the divorce is granted is no longer valid. Commins Hendriks Solicitors have many legal professionals who can help you with your will.

Remember, while a divorce will finalise the dissolution of your marriage, It will not determine other aspects, like property settlement or custody of any children. We can organise proceedings to be started for these things at the same time as your divorce application.