

## FAQ's - SEPARATION

**Q: My friends all have different stories about how to separate. I find it quite confusing. Can you give me some information?**

**A:** Separating is difficult and getting the right information and supports can do a lot to lighten the stress and upset. First of all have a read of our document "Formalising Separation". This will give you a good overview of the different approaches you can take and help you to work out the most appropriate for your circumstances. If you feel mediation might be the way for you, contact us to obtain more information. For any of the other options you will require a solicitor who practices family law. Even if you do decide to opt for mediation, we will advise you to obtain legal advice so sourcing a suitable solicitor early on is a good idea.

**Q: I want to go for mediation but my wife won't. What can I do?**

**A:** Many people are confused about what mediation is and how it works. Do your research, obtain information about the process and give it to your wife to read and make up her mind. Sometimes people are fearful about discussing their private business. Mediation is a confidential process and your mediator will reassure you and your wife that all information provided at the sessions is confidential. Or it may be that one party fears that the other will get 'their own way' during the process. The mediator's role is to ensure that the process is fair and just and that each party has obtained legal advice about their rights. We are happy to discuss any concerns you or your wife may have so feel free to contact us at Amicus.

**Q: How do I find a good family law solicitor?**

**A:** The best way is through recommendation. Ask around, you are bound to know people who have been through a separation. Ask about their solicitor. You want a solicitor who will be attentive, is able to explain the law clearly to you and who will keep you fully informed of all developments in your case. If the matter becomes contentious and you or your spouse issue legal proceedings, you will want your solicitor to be willing and able to actively represent you. It helps to have a good two-way relationship with your solicitor.

**Q: Why go for Mediation when you still have to go to a solicitor. Isn't that doubling the cost?**

**A:** Mediation allows a couple to retain control over decisions affecting their future. The mediator's role is to facilitate and guide the discussion between the couple so that all options are explored before decisions are made. Couples are usually together throughout mediation and this allows each side to listen to the other and have the satisfaction of knowing that their point of view will be heard. Occasionally, when relations are very strained between the couple, they may wish to

mediate while in separate rooms for part or all of the process. This is known as 'shuttle mediation'. Mediation is a dignified way for a couple to separate from each other. In comparison to other ways of separating, mediation is less expensive, has less chance of becoming adversarial and is fair to both parties. It is recommended that prior, during or after mediation you attend a solicitor for legal advice about your rights and about the proposed outcome of mediation. In general attending a solicitor for the full process of separation will be more expensive than mediation.

**Q: We have decided to separate and have worked things out between us. We don't feel we want to waste money on mediation or a solicitor. Is there anything to stop us doing it our way?**

**A:** There is nothing to stop a couple from reaching their own decisions and separating. However it is important that you put everything that is agreed in writing so as to keep matters very clear. This will not be a legally binding agreement. The danger of not recording what has been agreed is that if relations break down afterwards, it can lead to further dispute over what had been agreed. It is always advisable however to learn about your rights and tax implications prior to separating.

**Q: I find legal terminology confusing. Can you tell me the difference between Judicial Separation, Separation Agreement and Deed of Separation?**

**A: Judicial Separation** means a separation order granted by the court. Legal proceedings are issued by one spouse, which the other spouse has the opportunity to respond to. When all of the necessary paperwork has been filed in the court office, a date for the hearing of the case will be granted. On the day(s) of hearing the Judge hears all of the evidence in the case, following which s/he makes an Order. Both parties are obliged to comply with the terms of the Order or risk being charged with contempt of court. If a party is unhappy with a decision made by a Judge, s/he may appeal to a higher court.

Alternatively, in cases where legal proceedings have issued but the parties reach agreement before the hearing, either through mediation or negotiation by their legal team, the written agreement may be handed into court on the hearing date with a request to the Judge to make an **Order on Consent**. If the Judge agrees to make such an order, evidence is not generally required. The Agreement then becomes a Court Order and must be treated as such by both parties, or risk contempt of court charges.

**Separation Agreement:** The two parties will have reached agreement on the terms of their separation either through mediation or through negotiation with their solicitors. There is no court involvement in this process.

Where mediation has successfully taken place, each party brings a copy of the mediated agreement to their own solicitor for advice and the content is then incorporated into a legally binding Separation Agreement.

Where agreement has been reached through solicitors' negotiations, the Separation Agreement is drafted by one solicitor and sent to the other for approval. When final approval is given, the documents (2 identical copies) are signed by both parties and witnessed and the separation agreement then becomes legally binding.

It is very important that each party retains his/her own original Separation Agreement as it may be required at a future date, e.g. revenue purposes; purchasing property; applying for a divorce.

**Deed of Separation:** Means the written terms of the separation agreement. Both these terms, Deed of Separation and Separation Agreement nowadays are used interchangeably and effectively mean the same thing.

**Q: I am still living in the family home with my spouse but finding it very difficult due to constant arguments. We are going to court but won't have a hearing date for our case for some time yet. My solicitor is good but I am finding things very difficult. Is there anything I can do to help my situation?**

**A:** This period of time can be very stressful, particularly where there are constant arguments, on top of the anxiety of going to court. You should talk to your solicitor about going for mediation. It is still possible to enter into mediation while waiting on a court date. If it is successful, the agreement reached can be handed into court. This would obviate the need for either of you having to give evidence or face the cost of a substantial court hearing. Your solicitor could discuss your request with her/his opposite number. If your spouse was willing to enter into mediation, it gives both of you control over your future rather than having to have a judge make decisions about the important issues in your life.

If your spouse is not willing to mediate, you could consider conflict coaching which would help you to cope with the continuing rows at home. It is a very supportive process for people under stress from conflict and will assist you to think more clearly and strategically. Have a look at Conflict Management on this website and feel free to contact us any time for more information.

**Q: We have been separated for over a year now and are having terrible problems about the children. I don't want to go back to court, is there any other way around this?**

**A:** Mediation is an excellent forum for working out a plan concerning children. It is an opportunity for each parent to have their own point of view heard and to listen to the concerns of the other. The mediator assists the parents in exploring all possible options for resolution and to work out a parenting plan that suits the needs of the children as well as the parents. Usually

the mediation can be set up with little delay and it is possible for a parenting plan to be agreed at one sitting.

**Q: I have had a falling out with my solicitor and am very worried because I am in the middle of my separation case. What should I do?**

**A:** Falling out with the person who is on your side in a legal action can indeed be very stressful and disheartening. Sometimes the situation can be fairly easily remedied through talking it out with your solicitor but sometimes not. Having a safe and neutral place to discuss the problem and get the help you need is vital. Check out our Conflict Mentoring programme. It will provide practical help and support. It will enable you to think through and analyse what has gone wrong and put in place a plan for dealing with the problem.

*The information provided by Amicus is for guidance purposes only and is not intended as a substitute for legal advice. We recommend that you obtain independent legal advice if you are contemplating a separation or divorce.*