

What is a Separation Deed?

A Separation Deed is a legally binding contract entered into voluntarily by both you and your spouse. The Separation Deed contains details of all your matrimonial financial matters and how they are to be divided between you or disposed off upon your separation.

You do not necessarily need to have been married, simply that you are separating. Married couples who do not necessarily wish to divorce straight away often favour a Separation Deed as it allows them to lead separate lives, divorcing at some point in the future. It is ideal for those couples who do not have grounds to pursue divorce immediately upon separation and those who may wish to wait and divorce after having been separated two years. A Separation Deed will provide financial security whilst waiting until it is time to divorce.

Once signed, a Separation Deed is a legally binding agreement, which is capable of being enforced. Should you divorce in the future the Separation Deed can be converted into the format of a Consent Order, to be signed by both of you and filed at court for the approval of a judge once the Decree Nisi is pronounced.

There is always a slight risk that if either you or your spouse experience a significant change in circumstances after the Separation Deed is entered into, which could not be foreseen at the time the Deed was entered into, that the court could refuse to make an order in the terms of the deed, if it is considered unjust to do so. In the average case this is unlikely, however, you do need to appreciate that there is a slight risk. It is therefore worth noting that a Divorce and related Consent Order is the most final and secure way of dealing with matters if this is an option open to you.

Some examples of items that can be included in a Deed:

- A statement setting out the purpose of the Deed and the fact that you both intend it to be legally binding
- The date of your separation and the fact that you intend to divorce in the future. You can also state such arrangements as who will issue the divorce, who will pay for it etc
- What is to happen to the former matrimonial home for example; whether it is to be sold or transferred to one of you
- Whether a lump sum is to be paid by one party to the other.
- Child maintenance arrangements
- How pension will be dealt with in the future upon Divorce

There are many other things that can be incorporated into a Separation Deed and we can discuss with you the settlement that you have agreed with your spouse and how this can be incorporated into a Separation Deed specifically drafted for you.

Before proceeding we would recommend that you consider, after advice, whether it is better to divorce rather than have a Separation Deed or visa versa depending on your own unique circumstances.