

Ending a Marriage - Annulment, Divorce and Separation

Introduction

When things are not going well in a marriage and there is a genuine need to consider a way out, very often the first word in anyone's mind would be 'divorce'. However, there are three different ways to end a marriage under the law. In this article, we seek to explain the three ways of ending a marriage: annulment, divorce and separation.

Annulment

An annulment of a marriage dissolves the marriage, as though the marriage has never occurred. In contrast to a person who is divorced, a person whose marriage is annulled will be considered "single" once the marriage has been annulled.

The annulment of a marriage has to be done within the first three years¹ from the date of the marriage and on at least one of the following grounds²:

1. Either party is incapable of consummating the marriage;
2. The wilful refusal of a party to consummate the marriage;
3. That a party did not validly consent to the marriage, as a consequence of duress, mistake, mental disorder or otherwise;
4. That a party was suffering from a mental disorder of a kind and to such an extent to be unfit for marriage;
5. That a party was suffering from venereal disease in a communicable form (sexually transmitted diseases); or
6. That the wife was pregnant by some person other than the husband of the marriage.

Divorce

If a couple has been married for at least three years³, the marriage can end through filing a divorce.

¹ S 107(2) of the Women's Charter (Cap 353, 2009 Rev Ed)

² S 106 of the Women's Charter

³ S 94(1) of the Women's Charter

To obtain a divorce, the couple must show that the marriage has irretrievably broken down⁴. This is the only ground of divorce. In order to prove that the marriage has irretrievably broken down, this can be proven through any of the following facts⁵:

1. Adultery;
2. Unreasonable behaviour;
3. Desertion for at least two years;
4. Separation for at least three years and both parties consent to the divorce; or
5. Separation for at least four years.

In the event that you wish to file for a divorce but have not been married for three years, you are still allowed to file for a divorce on the condition that you prove to the court you have exceptional circumstances that the court ought to grant you the right to apply for a divorce. These exceptional circumstances under the law are if the applicant has suffered exceptional hardship or if the spouse has been exceptionally deprived⁶. Once the court has granted to you the right to do so, you can then proceed to file for a divorce against your spouse.

Separation

Some couples chose to live apart from each other and use this as a fact to support their divorce application. Others chose to wait for a more appropriate time to file their divorce and separate in the interim.

These couples are still legally married under the law but the marital relationship is suspended. Couples are released from their duties under a marital relationship and this also provides the space needed between the couple to consider whether they ought to reconcile or end the union by applying for divorce.

There are three ways a couple can separate from each other:

- i. By making informal arrangements;
- ii. Through a formal agreement known as a deed of separation; or
- iii. Through a judgment of Judicial Separation⁷.

A deed of separation is a document that contains the terms and conditions which the couple agree to as they separate from each other. Common terms would include the couple living apart by a certain date and living arrangements for the children of the marriage.

⁴ S 95(1) of the Women's Charter

⁵ S 95(3) of the Women's Charter

⁶ S 94(2) of the Women's Charter

⁷ S 101 of the Women's Charter

Judicial separation is a judgment given by the court when the couple has proven that the marriage has irretrievably broken down, just like a divorce. While there may appear to be no practical advantage of obtaining a judicial separation as compared to simply obtaining a divorce, some couples do this for personal or religious reasons. Judicial separation also offers some protection, as it would be easier for protection orders to be obtained and the husband may be prosecuted for raping his wife if they are living apart under a judgment of judicial separation.

Conclusion

Every person's situation is unique and divorce may not be the only way to move away from a marital relationship. Speak to one of our experienced lawyers today, we are ready to help you consider and navigate through this season of transition.

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