

Divorce and separation during COVID-19

Many married couples have been experiencing increased friction and relationship turbulence during lockdown. Such friction may be due to drastic changes to their routines that now involve spending extended periods at home together, often in small apartments.

It seems that some marriages which worked adequately when spouses only saw each other for a few hours a day no longer pass muster when the lines between home and work life become blurred, and spouses begin to lose a sense of independence.

As such, there is an increased interest in divorce and separation. To those now considering, for the first time, ending their marriages, circumspection is advised. Much of the distress and frustration that many are feeling under lockdown can sometimes be attributed in large to mere cabin fever, and not entirely to a spouse. This ought to be taken into consideration. Perhaps, once the lockdown is over and old routines are reinstated, a marriage that seems unworkable at the moment may once again become acceptable.

In any case, the courts are not hearing divorce cases until the lockdown is over. When the lockdown is lifted, long delays in cases being processed are anticipated, as the courts have to start sifting through the backlog of hearings that has been building up.

So if divorce is not a realistic option right now, and you feel that your marriage is on the rocks, maybe this is the time to approach your marriage from a different perspective. For example, counselling can be a helpful option for couples, and is available remotely, so there is no excuse to postpone it. There are a number of

service providers offering video-call counselling online.¹

However, if you really think that your marriage is beyond redemption and you are ready to pull the plug on it, then you need to think about the grounds for divorce. The most common grounds are unreasonable behaviour (fault-based) and separation for three years (with consent), or four years' separation without consent.

If your spouse is guilty of behaviour that is arguably unreasonable in a marriage (check with a lawyer to see if it is), then you can go ahead and file a writ for divorce right now. However, unless your spouse agrees with all your allegations and demands (this is called an uncontested divorce), a hearing will be necessary, and this hearing is unlikely to happen anytime in the next few months. It is much cheaper and faster for spouses to agree on everything when divorcing, and avoid the cost and acrimony involved in fighting it out in court. If you have children, anything you can do to make the divorce less acrimonious is likely to spare them unnecessary distress.

If it is feasible for you to separate for three to four years before commencing the divorce, this is also likely to save legal costs, and to avoid the finger-pointing and allocation of blame for the breakdown of the marriage that comes with an unreasonable behaviour divorce. If you have children, there is great value in preserving a civil relationship with your co-parent.

Moving to a new house is still permitted during lockdown. As such, if you can afford to move, consider

¹ For example: <https://therapyrocks.com/> or <https://safespace.sg/>

doing so. If you cannot, the courts in Singapore understand that married couples sometimes effectively end their marriage while still having to continue living in the same apartment for practical reasons. Therefore, it is possible to be separated for three years while still living under the same roof, as long as you do not do any married couple activities like sleeping together, cooking for each other, eating meals or watching television together or doing each other's laundry. However, living separate lives in a single apartment under lockdown conditions when both parties are always there is a lot more difficult than it is ordinarily, and you would need to make a conscious effort to do so.

If you do decide to divorce under the ground of separation for three years with consent, it is advisable to have a separation agreement drafted for you. The agreement will help you and your spouse to agree on the division of matrimonial assets, custody and access issues and all the other nitty gritty details involved in dissolving a marriage. If you can agree on these things, it will save a significant amount of costs in three years' time when you apply for a divorce. Sometimes, a reasonable spouse can become unreasonable over the course of three years, and issues that may be easy to agree at the time of separation may be more contentious at the time of divorce. If both parties have already signed a separation agreement, these issues are more or less already set in stone and are difficult to re-open at the time of the divorce.

If you suspect that your spouse is unlikely to be reasonable and that your divorce is likely to be contentious, it is advisable to use this time during lockdown to take stock of your financial situation. Get your records in order, make a list of all your matrimonial assets, track your monthly living expenses and start keeping accounts of your various categories of expenditure, who pays for them and in what proportion. If you can get out of the house to call a lawyer, do so. He/she will advise you on what kind of evidence you will need to get your fair share of the matrimonial assets and to ensure appropriate custody and access arrangements for any children.

Getting divorced can be an ugly and unpleasant business. However, it does not have to be if parties can put their egos aside and be practical. If they cannot, a lawyer will charge you significantly more for the additional work required to get you a divorce. Most

lawyers would much rather charge you less for a non-contentious divorce that can be dispensed with without court attendance because this frees up their time to take several more such divorces rather than sinking all their opportunity cost into a smaller number of contentious divorces.

On the other hand, avoiding speaking to a lawyer out of a misguided concern that they will make a divorce more contentious and expensive is usually a false economy. Whilst acknowledging that lawyers obviously have a vested interest in people engaging their services for a divorce, it really is true that if both parties are reasonable, getting a lawyer involved at an early stage tends to speed up the process making it more transparent and predictable for both parties.

In conclusion, if you can save your marriage, do. If you really cannot, reach out to a lawyer to make sure that your divorce is done properly.

In light of the constantly changing circumstances, this is a general overview and should not be treated as legal advice. The information presented is correct to the date of its publication.



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Nadia Moynihan is a Director of August Law Corporation. Nadia's practice represents a broad cross-section of the kind of legal services that most businesses and individuals typically need, regardless of industry sector or client profile, with a particular focus on dispute resolution. Her expertise includes matters relating to schemes of arrangement, bankruptcy proceedings, trade disputes, employment disputes and a wide array of other contractual and tortious claims from fraud to defamation. She also practices family law and deals with non-contentious matters including the drafting of commercial agreements and personal legal instruments including those related to estate planning.