

Divorce

What is a divorce and what must I prove to file for divorce?

Divorce is the recognition of the official ending of a marriage. You must be separated for twelve months before you can apply for a divorce. Divorce is a separate issue from property settlement, and you do not need to wait for a divorce to deal with property matters.

The only legal requirement for getting a divorce is the 'irretrievable breakdown' of the marriage. This is proven by the married couple being separated for twelve months and where there is no likelihood of them getting back together.

As well as the requirement of a twelve month separation period, to apply for a divorce you or your spouse must:

- be an Australian citizen; or
- live in Australia and consider it your permanent home; or
- normally live in Australia and have lived here for at least 12 months before applying for a divorce.

If you were married overseas you can still apply for a divorce in Australia. You will be required to produce a copy of the marriage certificate for the divorce application.

How do I apply for a divorce?

Divorce applications are made in the Federal Circuit Court. You can prepare the application and go to court yourself or you can engage a solicitor to assist you and/or appear for you in court if you wish.

The divorce application should be eFiled online using the Commonwealth Courts Portal. You can make either a joint (applying together) or sole (applying separately) application for a divorce.

If making a sole application, you must serve the other person with the application. What this means is that you must give the other person the divorce application so that they are notified of the court proceedings.

You must complete certain forms to show that the other person has been served. You cannot serve your former partner personally; however, you can try by mail. They will need to return the signed service acknowledgement form. If they do not, you will need to arrange for service another way, usually by engaging a process server to attempt to effect service.

All of the relevant forms and information can be found on the Family Court of Australia website which has a Divorce Service Kit that gives a step-by-step guide to serving your divorce application by post or hand, and information about how to complete the divorce service forms.

Can I get a divorce if we are separated but living under the same roof?

If you are applying for a divorce on your own or jointly with your partner, and you wish to count a period of time that you were separated but living under the one roof, you will need to file an affidavit with your divorce application which supports your claim that that you are separated.

For a sole application, you are required to file an Affidavit from a third person who can corroborate your evidence, such as a parent who has observed you both to be living separate lives following your separation.

If you are applying together, you must each file a separate affidavit. In the event only one of you is able to file an affidavit, you must file an affidavit by a third person who can corroborate your evidence.

The issues that the courts will consider are things such as whether you slept in separate rooms, whether you had sex, whether you had separate finances, and whether you shared meals and domestic duties. You should seek legal assistance about the content required for the affidavit prior to filing.

Divorce

Short marriages – less than two years

If you have been married for less than two years you will firstly be required to seek counselling from a counsellor recognised by the court before you are able to get a divorce. The counsellor will need to be satisfied that the marriage has broken down and there is no chance of a reconciliation. The counsellor will issue a certificate that can be attached to your divorce application. The court may grant leave for the need to attend counselling to be waived in special circumstances such as cases involving domestic violence or if you cannot locate your spouse.

The two years is calculated from the date of the marriage to the date of applying to the court for a divorce. You and your spouse must also have been separated for at least 12 months before applying for a divorce.

Divorce filing fees

There is a filing fee for filing a divorce in the Federal Circuit Court. The current fees can be obtained from the Federal Circuit Court of Australia website. If you are experiencing financial hardship, you can fill out an application form to reduce the filing fee. Proof of financial hardship is required, such as a copy of your health care card. If you are filing a sole application only the applicant needs to be eligible for the reduced fee. If you are filing a joint application, both parties must be eligible for the reduced fee.

Do I need to go to court?

If you are making a sole application and there are children under 18 who were part of the family before separation, you must go to court.

In your application you will be asked about the arrangements for the children such as who they will live with and how they will be financially supported. You may be asked about this when you attend court. You are not required to attend court if you are making a joint or sole application and no children are under 18.

What happens at court?

If you meet all the requirements and the Court is satisfied that proper arrangements have been made for any children from the relationship, then Divorce Order will be made. The Divorce Order will become final 1 month and 1 day after it is made. The date when the divorce order becomes final is the actual divorce date.

Can I oppose the divorce application?

If your spouse applies for a divorce and you do not agree that the grounds for divorce have been met, you can oppose their application. For example, if you say you both have only been separated for a few months, you can oppose the application. You should seek legal advice about this as you need to respond within a certain time. Alternatively, if you want the divorce granted but disagree with the facts in the Application for Divorce, you will need to file paperwork with the court and then attend the Divorce Hearing to explain.

What happens once a divorce order is made final?

When the divorce order becomes final you can remarry. You should also update your Will to consider your new circumstances.

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Bayside Community Legal Service acknowledges the traditional owners of the lands across Queensland, and in particular the Quandamooka peoples, the traditional owners of this land where our Bayside community is situated. We pay our respect to elders past, present and emerging