

DIVORCE



In Australia, a spouse's entitlement to property adjustment, maintenance or child support (ie. financial matters) has very little to do with 'divorce'. A 'divorce' is simply an order that makes a person no longer legally married. The benefits of a divorce order include the capacity to re-marry and plan one's estate without concerns as to a legally related, ex-spouse.

Because property adjustment, maintenance and support issues are separate matters, applying for a divorce is usually a straightforward process and can often be done without lawyers. It is very common for parties (or either of them) to file divorce applications themselves, but have legal representation with respect to financial issues and parenting matters.

There are still technical requirements and important legal aspects of a divorce though. For example, if a divorce is obtained, each party then has 12 months to issue proceedings as to property adjustment or maintenance issues. It follows that if you have or are about to file a divorce application (or your partner has), you should speak to a lawyer to ensure that you are fully advised as to how a divorce impacts upon any other rights that you may have.

Can I apply for a Divorce?

You can apply for a divorce in Australia if either you or your spouse:

- regard Australia as your home and intend to live in Australia indefinitely, or
- are an Australian citizen by birth, descent or by grant of Australian citizenship, or
- ordinarily live in Australia and have done so for 12 months immediately before filing for divorce.

You need to satisfy the Court that you and your spouse have lived separately and apart for at least 12 months and that there is no reasonable likelihood of resuming married life. It is possible to live together in the same home and still be separated.

To apply for a divorce, an Application for Divorce must be prepared and filed with the Court, together with payment of the application fee. You can apply for a divorce together with your spouse, or either of you can apply separately.

What does a Court consider in a Divorce Application?

The Court does not consider why a marriage ended. The system is colloquially described as a "no-fault" process, meaning there is rarely a need to delve into accusations of conduct that may have contributed to the breakdown of a relationship. The only relevant ground is whether the marriage has broken down irretrievably and that there is no reasonable likelihood of the relationship resuming. The Court will be satisfied that a relationship has broken down irretrievably if the parties have been separated for at least 12 months when the application was filed.

If there are children aged under 18 years of age, a Court also must be satisfied that proper arrangements have been made for them.

What will a Divorce Cost?

If you prepare and file the Divorce Application yourself, your only cost will be the Court filing fee. Should you require our assistance in preparation of the Application and attendance at the hearing, we can provide you with a fixed fee/cost.



Can I oppose a Divorce Application?

If you have been separated for more than 12 months, there are few opportunities to oppose a divorce application. The primary grounds to oppose a divorce are where:

- there has not been 12 months separation as alleged in the application, or
- the court does not have jurisdiction.

If you do not want the divorce granted, a Response to Divorce must be completed and you will be required to appear at the hearing date. You need to set out the grounds upon which you seek the dismissal in the Response to Divorce and file an Affidavit containing evidence in support of those grounds.

What if the Application has errors of fact?

If you disagree with the facts in the Application for Divorce, a Response to Divorce document should be filed. The response should specify the facts alleged with which you disagree. The errors might, for example be the date of separation, the dates of birth or the details regarding arrangements for the children. If you do not oppose the divorce being granted, notwithstanding any errors, you do not need to attend the hearing.

Do I have to attend the Divorce Hearing?

Assuming no Response is filed, you are not required to attend the hearing if:-

- there is no child of the marriage aged under 18 years; or
- the application is a joint application.

If you have made an application without the other party and there is a child of the marriage aged under 18 years, you (the applicant) are required to attend the Court hearing.

A child of the marriage includes:

- any child of you and your spouse, including children born before the marriage or after separation

- any child adopted by you and your spouse, or
- any child who was treated as a member of your family prior to your final separation; for example, a step-child or foster child.

What if we separated but remain living together?

It is possible for couples to be separated under one roof. If this applies to your situation, the Court must be satisfied that you were separated for 12 months prior to the application, notwithstanding such living arrangements. An affidavit is required in these circumstances, which should contain as much information as possible with respect to separation occurring. It would be best to obtain legal advice and assistance with the preparation of such an affidavit.

I have been married for less than two years. What do I need to do?

If you have been married for less than two years and want to apply for a divorce, you must either:

- attend counselling to discuss the possibility of reconciliation; or
- seek permission of the Court to apply for a divorce.

The 12 month separation requirement still applies, so that this type of case is relatively uncommon.

Where to next?

The first step would be to arrange an appointment with one of our Family Law team members, which can be arranged via contacting our Client Relationship Manager, Michelle Silipo on (07) 5552 6601. A confidential, initial consultation can then be arranged to discuss your circumstances and any queries that you may have.