



FAMILY LAW

HOW DO I APPLY FOR A DIVORCE?

Australia is a “no fault” jurisdiction. This means that the only ground for divorce is an “irretrievable breakdown of marriage”, which is established by satisfying the Court that you and your spouse have lived separately and apart for not less than 12 months before you file your application.

If you are certain that your separation from your spouse is permanent, and

1. either you or your spouse:
 - is an Australian citizen; or
 - is ordinarily resident in Australia and has been for the year immediately before the application is filed; or
 - is domiciled in Australia; and
2. you have lived separately and apart from your spouse for at least 12 months, and there is no reasonable likelihood of reconciliation;

then you can apply to the Court for a divorce. Your spouse does not have to agree.

The Hearing of your divorce application can sometimes be several months after the date of filing. This means that you should not make arrangements to remarry until the divorce becomes final.

If the divorce goes through, then a Decree Nisi will be granted. One month and one day after the Decree Nisi, the Divorce Decree will become final. This is called a Decree Absolute. The exceptions to the Decree becoming absolute are where:

- an appeal or an application to set aside the decree is filed and it cannot be determined in that period of one month; or
- one of the parties has died; or

- the Court has declared that it is not satisfied that there are proper arrangements for all children aged less than 18 years of age.

What you should consider if you file for a divorce

1. Should the application be a sole application ie one party only, or should it be both parties making a joint application?
2. If you have been married for less than 2 years, you will likely need to lodge a special counselling certificate with your application
3. If you have children, the Family Court will not grant your divorce unless it is satisfied that appropriate arrangements are in place for the children
4. You must commence property (and if applicable, spousal maintenance) proceedings in the Family Court within 12 months from the date of the divorce OR file an application for consent orders within the same timeframe
5. The act of divorce now automatically revokes your Will

We strongly recommend that you seek legal advice prior to commencing an application for a divorce.

This information constitutes general information only. If you require detailed advice on Divorces, or any other family law issue, please contact Natalie Dimmock at Murfett Legal Pty Ltd on (08) 9388 3100 or natalie@murfett.com.au.