

Divorce: A Fact Sheet

Separation can be a really stressful time. Every month Citizens Advice Bureau helps hundreds of people from all over WA access the information and advice they need to know when they separate. This fact sheet is designed to answer our most frequently asked questions about divorce.

Please note that you can submit paper applications or e-file your divorce application using the Commonwealth portal.

What is an application for divorce?

A divorce application is an application made to the Family Court of Western Australia to finalise the end of a marriage that's broken down irretrievably (beyond repair) with no possibility of reconciliation (getting back together).

Do my spouse and I have to apply for a divorce together?

You and your spouse can apply for divorce together (a joint application) or you can apply by yourself (a sole application).

What is the ground for divorce?

There's only one ground for divorce: that your marriage has broken down irretrievably and you're unlikely to reconcile.

Do I have to prove fault when I apply for divorce?

No, there's no need to prove fault. In Australia divorce is on a "no-fault" basis.

How do I prove my marriage has broken down and there's no chance of us reconciling?

The only proof the Family Court needs is that you and your spouse have separated, you've lived separately and apart for a continuous period of 12 months immediately before the date of filing the application, and there's no chance you'll reconcile.

If my partner and I reconcile and separate again, can my first period of separation be taken into account?

Yes, it can be taken into account in certain circumstances. You should get legal advice if this applies to you.

My spouse and I are separated but we've been living under the same roof. Can we still get a divorce after 12 months of separation?

Yes, you can, but you need to prove that you've separated. To do this you need an affidavit from an independent third party, plus either an affidavit from you and your spouse (if you're making a joint application) or an affidavit from you and a third person (if you're making a sole application). An affidavit is a written and sworn statement of something that can be used as evidence in court. You also need to provide certain evidence of your separation to the Court. This could include that both of you:

- sleep in separate bedrooms
- have ceased intimacy and sexual activity
- have separate bank accounts and finances
- don't do things around the house for each other
- act in such a way that people in your everyday life such as friends, family members, neighbours, and employers can tell that you've separated and your marriage has ended
- don't attend social activities together or
- don't socialise or entertain together in your home, for example watch TV together or host friends for dinner.

Which form do I need to complete to apply for a divorce?

You need to complete the Family Court's Form 3 – Application for Divorce.

What is a "short marriage"?

In Australian divorce law, a marriage of less than two years is called a "short marriage". The two year period is calculated from the date of your marriage to the date of your application for divorce.

If you had a short marriage, then before you can apply for divorce you're required to attend counselling with your former spouse to discuss if there's any possibility of reconciling. Your counsellor must be a professional who's able to issue an Attendance at Counselling Certificate.

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The Court needs this certificate before it will grant you a divorce.

What if I have a short marriage and I can't attend counselling?

If you can't attend counselling, you have to file an affidavit seeking the Court's permission to apply for a divorce. In your affidavit you need to explain:

- Why you and your spouse haven't attended counselling. If your spouse has refused to attend, you should explain your attempts to invite them to attend. If you can't find your spouse, you should explain the ways you've tried to locate them.
- Any special circumstances of your case, for example if there's a history of violence or abuse in your marriage and it's not safe for you to attend counselling with your spouse.

If I'm making a joint application with my spouse, what do we have to do?

- Both of you have to complete Form 3.
- You and your spouse have to appear before a Justice of the Peace and swear that all of the information you've provided is true. You can do this together or separately.
- You should make two copies of the signed Form 3, before filing the original and copies in the Court along with the filing fee and a copy of your marriage certificate. The Court will keep the original Form 3 and return a copy each to you and your spouse.

If I'm making a sole application, what do I have to do?

- You have to complete Form 3, providing all of your personal details and as many of your spouse's details as possible.
- You have to appear before a Justice of the Peace and swear that all of the information you've provided is true.
- You should make two copies of the signed Form 3, before filing the original and copies in the Court along with the filing fee and a copy of your marriage certificate. The Court will keep the original Form 3 and return the two copies to you.
- You should find another adult such as a family member or a friend to serve the documents on your spouse. You can also use a process server to do this. Once the other party has been served, the server has to complete the Form 7, specifying the date, time, and place where your spouse was served, and sign it before a Justice of the Peace.
- The server returns Form 7 to you. The server may also return the Form 6, signed by your spouse to say that they have received Form 3.
- You must swear an affidavit to say that the signature on Form 6 is your spouse's.
- You then file in the Court Forms 6 and 7 and your Affidavit of Proof of Signature.

Can I serve the documents on my spouse by mail?

Yes, you can, but it's not advisable if you think that your spouse might not complete and return Form 6.

Do we have to attend court?

You only have to attend court if:

- there are children of the marriage aged under 18; **or**
- you are making an application for divorce having lived under the same roof after separation.

Why do we have to attend court if there are children?

The Court needs to be satisfied that your children are spending time with the parent they're not living with.

When will my divorce become final?

If there aren't any issues with serving the documents on your spouse, then your divorce will be finalised one month and one day after the court date specified on your Form 3. The Court will issue a Certificate of Divorce Absolute to you. It's only once you have this certificate that you are free to re-marry.

Need Legal Advice?

Contact Citizens Advice Bureau to make a low-cost appointment at our Perth office, for details of how to make an appointment at your nearest branch or by telephone.

(08) 9221 5711 (Lines open Mon-Fri 9:30am-4:00pm)

Level 1, 25 Barrack Street, Perth WA 6000

