

Divorce Law

Getting A Divorce

What is a “decree of dissolution of marriage?”

This is commonly known as divorce.

Which court can grant a divorce?

In Western Australia proceedings for a decree of dissolution of a marriage is in the Family Court of Western Australia.

Who can apply for a divorce?

You can apply for a divorce if you are a party to the marriage, and if either party is:

an Australian citizen;

domiciled in Australia; or

usually resident in Australia and has been so for one year immediately preceding the filing of the application for divorce

What does domiciled in Australia mean?

Typically it means a person is a permanent residence.

Grounds for Divorce

What are the grounds for divorce?

The sole ground for divorce is the irretrievable breakdown of the marriage, and it is unlikely that cohabitation will resume.

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

No you do not need to prove fault. Since 1975 we have what is known as “no fault divorce”. You need to prove that the marriage has broken down irretrievably.

How does one prove that the marriage has broken down irretrievable?

This is proved by showing that the parties have separated and lived separately and apart for: a continuous period of 12 months immediately before the date of filing of the application; or an aggregate period of 12-months separation with only one resumption of cohabitation, not exceeding three months.

My spouse and I have been separated but have been living under the same roof. Can we get divorce after 12 months of separation?

If you and your spouses have established “separate households” under the same roof and the court is satisfied, it may be possible to establish separation.

In cases of separation under the same roof, the court will require independent evidence from other witnesses as well as evidence from the parties to the marriage of the fact that parties have separated.

Short Marriages

What is a short marriage?

A marriage of less than two years is referred to as a short marriage in relation to obtaining a divorce.

I have been married for only one year and have separated from my spouse. Can I get divorce after twelve months of separation?

An application for dissolution of marriage cannot be filed within two years of the marriage without permission from the court unless a certificate is filed with the application.

This certificate will state that the parties have considered a reconciliation with a marriage counsellor, an approved marriage guidance counselling organisation, or another suitable person or organisation nominated by the Principal Director of Court Counselling or an appropriate officer of the Family Court. The certificate must be signed by that person or organisation.

Exceptions

Are there any exception to the above rule?

Yes there is. If the court is satisfied that there are special circumstances and that the application for divorce should proceed even though the parties have not attended counselling, the court may proceed to give leave for the application to be filed or, if the application has been filed, grant a divorce if parties have been separated for 12 months before the application was filed.

Application

Do both of us have to make the application?

You can make a single application or do a joint application.

Do we have to attend court?

If there are no children of the marriage, parties do not have to attend court, but this is not the case if there are children of the marriage.