

DIVORCE PROCESS EXPLAINED

Whether it is you or a loved one – this is a very stressful process. In this short White Paper, we outline some definitions and some processes to follow:

Nullity – Is it a Legal Marriage to start with?

Before you apply for a divorce in Victoria, you must ensure that you were married validly. A marriage will be declared void if it was a marriage of bigamy, a marriage between close relatives, the requisite formalities were not adhered to, one party did not consent due to fraud or duress or either party was too young (both parties must be 18 years old unless a court order has been issued). If a marriage is declared void, then it is deemed to never have existed under Australian law.

Separation – One year

The only way to get a divorce is if your marriage has irretrievably broken down. You must be separated for at least 12 months and there must be no reasonable chance of getting back together. If the court believes that there is a reasonable chance of you resuming cohabitation, they will not grant the divorce.

Separation under one roof

You can still live under the same roof and be separated for the purposes of your divorce application. One or both parties, however, must honestly believe that the marital relationship will never be resumed. It is possible to resume living together as husband and wife once during this period, for up to three months. If this period is less than three months and you end up separating once more, you will still be able to apply for a divorce.

Marriages under two years

The court will not grant a divorce if it is filed within 2 years of the date of marriage. The exception to this is if you have both attended counseling and produce a certificate to the court to this effect under. If only one party undergoes this counseling, the other can apply for a leave of court to bypass this requirement.

Children

The welfare of any children is one of the court's utmost priorities. The court will not grant your divorce unless the welfare of your children and their continued development is guaranteed. It is likely that you will be asked to attend court if your children are under the age of 18. The court must be convinced that a stable situation is in place for the children before the application will be approved.

The Divorce application

An application can be obtained from the family law courts website (www.familylawcourts.gov.au).

There are certain documents that must be attached to this application, such as your marriage certificate and proof of citizenship. In certain situations, affidavits will also need to be completed, for example saying that you were separated even though living under the same roof.

This application can be completed by one party or together. If you file it by yourself, it will then be served upon the other party and a court date will be set.

The cost to file a divorce as of November 2016 is \$865.00 (please check the above website as this price is subject to variation).

DISCLAIMER: This White Paper is provided as a broad overview and should not be relied upon as a substitute for legal advice.

If you require further advice in relation to the above or Family Law generally, please contact us.

More Information?

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