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LawTalk Blog



We have separated but live in the same house. Can we still get a divorce?

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To apply for a divorce in Australia, you must meet one of the following jurisdictional requirements:

1. You regard Australia as your home and intend to live in Australia indefinitely; and/or
2. You are an Australia citizen; and/or
3. You ordinarily live in Australia and have done so for 12 months immediately prior to filing your divorce application.

The court must also be satisfied of the following:

1. That you and your spouse have been separated for at least 12 months; and
2. That your marriage has broken down irretrievably and there is no likelihood of that you will get back together.

It is therefore completely possible to be granted a divorce if you have been separated from your spouse for a period of 12 months but still live under the same roof. This is referred to as 'separation under one roof'.

What is separation under one roof?

It is not uncommon for a husband and wife to separate but continue to live together under the same roof.

Often this is for a short period of time, however it is also not uncommon for spouses to remain living together in the same home for months or sometimes even years following separation. There may be many reasons for this including the financial capacity of the parties, the health of the parties as well as the parenting arrangements for any children.

If you and your spouse have continued to live together in the same home for part of, or all of the required 12 month separation period, then you will be required to provide the court with additional information and evidence when filing your application for divorce.

You will generally need to provide two affidavits; one of your own and one by another person, such as an adult family member or friend.

The affidavits should provide details of your separation. You will need to provide relevant information which goes towards establishing that you and your spouse have in fact separated notwithstanding that you have remained living together.

What information is required to prove my spouse and I have separated?

Common information and details required in the affidavits will include information like:

- any change in sleeping arrangements;
- the division of finances - ie. introduction of separate bank accounts, the payment of household bills;
- any change to the performance of household duties for each other - ie. cooking and cleaning;
- changes in social lifestyle - ie. Outings and attendance at events as a family;
- current arrangements for the care of any children and any ongoing future arrangements;
- details regarding any notification that you have made to family and friends of your separation;
- details regarding any third parties organisations that have been advised of your separation - ie. Centrelink, Child Support;
- information about why you have remained living in the same home;
- information about the plans for future living arrangements moving forwards.

The above list is not a definite list of factors that must be satisfied in order to prove to the court that you have separated under the same roof. It will however be difficult to persuade a court that you have separated with your spouse if there has not been a significant change to the living arrangements and your perception to family and friends remains as if you are still a couple.

Even if two parties prepare a joint application for divorce, as opposed to a sole application, there is still the requirement to provide affidavit evidence to the court if you have been living together in the same home for part of, or the entire 12 month period of separation.

In this situation, both spouses are able to prepare separate affidavits and therefore there would be no need to prepare an affidavit of an independent party (family member or friend).

Do I need a lawyer to help prepare my affidavit?

It is important that your affidavit contains all the relevant information otherwise your application for divorce is likely to be rejected. For this reason, we recommend obtaining legal advice and having a lawyer prepare this document for you.

If you need help preparing such a document or assistance with obtaining a divorce, [contact](#) Andersons Solicitors' [family law](#) team.

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