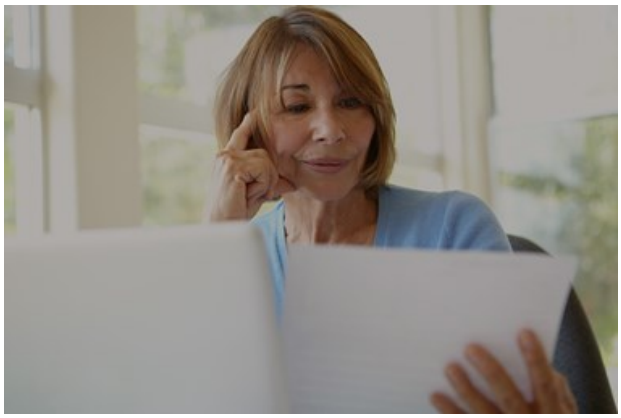


How to apply for divorce without using a lawyer

Author: Jane Holford
Email: jane@smithfamilylaw.com.au
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Obtaining a divorce is the legal end to a marriage. The divorce process is relatively straightforward, and many people choose not to engage a lawyer to assist them with their divorce.

There is no requirement in Australia to engage a lawyer when applying for a divorce. However, due to the complexities of many family law matters, it is a good idea to see a lawyer to understand your rights and responsibilities in relation to divorce, along with any relevant family law matters such as parenting arrangements and property settlements.

Do-it-yourself divorce

You can apply for a divorce online, by yourself, using the Federal Circuit and Family Court's online Divorce Kit. To apply for a divorce online, you complete the online interactive Application for Divorce and pay a filing fee.

Filing for divorce

You can fill out the interactive online form and file your application online by using the Commonwealth Courts Portal and paying a filing fee.

Currently, it costs $1,100 to file for a divorce ($365 if you are eligible for a reduced fee, for example, having a health care card). You have the choice of filing solely by yourself or jointly with your ex-spouse. Whether you file by yourself or with your ex-spouse, the filing fee remains the same.

Joint or sole application

When filing for divorce, you have the option to file either jointly or solely.

To file a joint application means that both you and your spouse are joint applicants. You both fill out and sign the application before officially filing it with the Court. You do not have to 'serve' the documents on the other party if you file jointly, as both you and the other party already know and agree to the contents of the application.

If you file a sole Application for Divorce, you are known as the applicant, and the other party is known as the respondent. Only you are required to sign the application. The respondent does not need to sign the application, but you are required to 'serve' the documents that you have filed on them.

Serving your divorce papers

To 'serve' documents on your spouse means to give the court documents to them according to the court rules. You are required to serve these documents on your ex-partner so they are aware that you have filed for divorce.

To effect service correctly, according to the Court rules, requires you to serve specific documents in a prescribed time frame in a certain way. You can view a step-by-step guide to serving divorce papers in Australia on the Courts website.

Effecting service properly according to the relevant court rules can be complicated. If you are unsure of the correct process or just do not want to have to deal with it, you should talk to a lawyer to plan your next steps.

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You can read more about this in our blog, "How do I serve divorce papers in Australia?"

Do I need to go to Court when applying for divorce?

You usually do not need to attend Court for your Divorce Hearing. There are some exceptions to this, including:

- either party has objected to the divorce being heard without the parties appearing;
- the respondent files a *Response to divorce* opposing the application; or
- you are applying for an order for substituted service or a dispensation of service.

An application for substituted service or dispensation of service is made when a party is seeking to deviate from the usual obligations and rules required when serving a divorce application (for example, if you do not know where your former spouse is living and do not know where to send the documents to).

If you want to attend the hearing, you can elect to do so when you file your application.

If you are concerned about having to attend Court, it is a good idea to engage a lawyer so that they can attend with you or on your behalf. They can make sure you have representation at Court so that you do not have to speak at the hearing if you do not want to.

The bottom line for DIY divorce

There is no requirement to engage a lawyer to get a divorce in Australia. However, family law matters are often complex, and there is no ‘one size fits all’ solution. You should get legal advice to understand your rights and responsibilities before applying for a divorce. A lawyer can help explain how the law applies to your case.

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What does getting a divorce mean?

Applying for divorce means just that – applying to no longer be married to your former partner. It means you are no longer legally married to your ex-spouse, and allows you to legally get married to someone else.

It is important to note that the granting of a Divorce Order has flow-on effects (some with time limitations) that you should discuss with a lawyer before applying for a divorce.

The granting of a Divorce Order does not resolve parenting matters or property settlement, or automatically amend/override Powers of Attorney and/or insurance policies. If you have any questions or concerns about any of these issues, it is important that you engage a lawyer to fully understand your rights and responsibilities.

Am I eligible to get a divorce?

There is no longer a requirement in Australia to give a reason as to why you want a divorce. This requirement was abolished in 1975 with the establishment of ‘no-fault divorce’. This means that parties do not need to show (and the Court will not ask about) which partner (if any) was at fault in causing the marriage breakdown.

The only ground for divorce is that the relationship has ‘irretrievably broken down’, meaning there is no realistic chance of you and your ex-partner getting back together. This can be proven to the Court by demonstrating that you and your partner have been separated for 12 months.

If you are concerned about being able to show that your marriage has irretrievably broken down, you should discuss these concerns with a lawyer to find out what information the Court needs to be able to grant you a divorce.

Additional considerations

There are certain eligibility requirements and considerations you need to address when applying for a divorce.

Being separated ‘under the same roof’

If you and your partner were separated but still living together for any part of the twelve (12) months prior to filing your application, you will need to provide the Court with more information by filing an Affidavit.

Childrens' matters

If you have children, you will need to address the living arrangements of your children in your application for divorce. This can be tricky, especially if the separation is new and you are unsure of how you will resolve any outstanding parenting matters.

Knowing where your ex-partner is located

If you do not know where your ex-partner lives or you foresee difficulty in contacting them, you will need to file a further application seeking to get a divorce without 'serving' your ex-partner.

If you are not sure whether you meet these eligibility requirements or have not properly considered certain aspects of the above, you should get legal advice before applying for a divorce.

Get help from a family lawyer

Getting a divorce can be stressful, and a lawyer can help take a lot of the confusion and bureaucracy out of the process.

Get in touch with one of our family lawyers for a free initial discussion to find out what your options are.

Contacting Smith Family Law

03 8625 8957

info@smithfamilylaw.com.au

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.