



FAMILY LAW: SEPARATION AND DIVORCE

This fact sheet has information about what separation is, why the date of separation is important and what you need to show the court to get a divorce.

What is separation?

Separation is when you and your partner end your relationship and stop being together as a couple. One of you might make this decision, or you both might agree.

Separation applies to people who were married or in a de facto relationship, which includes same-sex relationships.

When does separation start?

Separation starts when you or your partner decide to end your relationship, you tell each other about the decision, and you act on it. For example, when you and your ex-partner no longer live together.

Can separation start if you are still living under the same roof?

Separation can start while you and your ex-partner are still living under the same roof if the relationship has ended. This might mean that you sleep in different rooms, stop sharing money, stop eating together and socialising together, and tell your friends and family about the separation.

Why is the date of separation important?

The date of separation is important for both married and de facto couples. For married couples, the date of separation is the starting point for the 12-month separation you need to show in order to apply for a divorce order.

For de facto couples, the date of separation is the start of the two-year period you have to apply for consent orders or start a property case in the Family Court for consent orders. Once the time limit has expired, special permission from the court is required.

What is a divorce order?

A divorce order is an order made by the Family Court that legally ends your marriage. It only applies to those who were legally married, and not those in a de facto relationship.

Do you need to agree to divorce?

You and your ex-partner do not need to both agree to divorce. You can make an application on your own (known as a sole application) or together with your ex-partner (known as a joint application).

What do you need to show to get a divorce?

To get a divorce, you must show the court that you are not likely to get back to together, and you have your ex-partner have been separated for at least 12-months. For example, if you separate on 1 January the earliest you could apply for divorce is 2 January the next year.

You do not need to show why the relationship ended or that someone is at fault to get divorced.

If you have been married for less than two years (which includes the time that you were separated) you must:

- give the court a certificate to show that you have been to counselling, or
- show the court there are special reasons why the divorce order should be made even though you have not been to counselling.

Does a divorce order decide arrangements for a child or property?

A divorce order does not decide arrangements for your child or property. You will still need to reach an agreement with your ex-partner or apply to the court for orders about arrangements for a child or dividing property.



How can Legal Aid WA help?

The Legal Aid WA website has more information, videos and fact sheets about separation and divorce, see www.legalaid.wa.gov.au

You can also call the Legal Aid WA infoline on 1300 650 579 or Legal Yarn (First Nations callers) on 1800 319 803 for information or referral to a service that may be able to help.

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CMS 5280986v7 | Last reviewed: 19/02/2024