

Separation and Divorce

What do I need to do to be “separated”?

Separation happens when you and your husband or partner stop living together as a couple. You do not need an official document to say that you are separated. One or both of you may make the decision to separate, and tell the other person of that decision. One of you may then decide to move out of the home.

It is possible to be separated but still to live in the same house. This is called being separated “under the one roof”. Being separated will mean that, for example, you no longer sleep in the same bed, no longer have sex together, you may cook and eat separately and no longer do household chores for each other.

Even though there is no official separation document, there are some agencies you may need to tell that you and your husband, or partner, have separated. You may need to tell Centrelink, if you receive benefits already or if you need financial assistance. You may also need to contact the Child Support Agency; if you have children living with you, you may be entitled to financial payments (child support) from your husband or partner.

Can I get a divorce now?

You must be separated from your husband for at least 12 months before you can apply for a divorce. A divorce only applies to couples who are legally married, not in a de facto relationship. As explained above, it is possible for you to get a divorce if you have lived separately “under the one roof” for that 12 month period, or for some of it. If you have been married for less than 2 years you may have to attend marriage counselling before you can make your application for divorce.

Note that there is a time limit of 12 months after the divorce is final in which to finalise a property settlement with your husband or to apply to court for property orders if you have been unable to reach agreement.

How do I get a divorce?

You apply for a divorce at the Federal Magistrates’ Court. You can make the application for a divorce by yourself, or jointly with your husband. Divorce application forms and all the other documents you need to make your application may be obtained from your local Family Law Courts’ registry or on the Family Law Courts’ website.

The forms are provided in a free kit, which also contains instructions about how to fill in the forms. Once you have completed your application for divorce, you will need to “file” (send or deliver by hand) your application, with a copy of your marriage certificate, at your nearest Family Law Courts Registry.

Applications for Divorce (and some accompanying documents) can now be electronically filed through the Commonwealth Courts Portal.

If you have made the application for divorce on your own, a copy will have to be given or sent to (served on) your husband. This is important, as the court needs to be satisfied that your husband knows that you have applied for a divorce.

Do we both have to agree to be divorced?

No.

If you have been separated from your husband for at least 12 months, then you can apply for a divorce whether he agrees to it or not. Even if you don’t apply for a divorce, your husband can apply for a divorce after 12 months separation. You can only oppose the divorce if you have not been separated from your husband for 12 months, or if the court does not have jurisdiction to grant a divorce. The court can only grant a divorce order where the person applying for the divorce lives in Australia or is an Australian citizen.

What if I don’t know where my husband is?

If you have applied for the divorce on your own, you must serve a copy of the divorce application on your husband. This means that he must be sent or given a copy of your application. See the Family Law

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Courts Divorce Service Kit for a guide to serving your divorce application and completing the necessary forms. If you don't know where he is, you will have to make an effort to find a contact address for him. This may include searching the telephone directory, searching the electoral roll, asking family and friends if they know where he is, and asking his current or former employer.

If you still can't locate your husband, you may be able to apply to court for an order that your husband can be served by other means, or not served at all. More information can be found in the Family Law Courts booklet "Are you having trouble serving your divorce application".

How much is it going to cost?

When you file an Application for Divorce in the court, you may have to pay a fee. The current fee for a divorce application is \$550.00. In some circumstances you may be able to pay a reduced fee, for example if you have a government concession card.

How long does it take to get a divorce?

You must be separated from your husband for at least 12 months. From the time you file your Application for Divorce, to the time the final divorce order is made is usually around 3 months.

Do I need a lawyer for my divorce?

You do not have to use a lawyer for the divorce proceedings. If you are finding it difficult to complete the Application for Divorce by yourself, you may want to get some help from a lawyer at a community legal centre, or a private lawyer if you are able to pay for their services. You can represent yourself at the divorce hearing at court. The court is used to people attending court without a lawyer. You may choose to have a lawyer represent you at the hearing, if you can pay for them to do so.

Do I have to go to court?

You will have to attend the divorce hearing at court if you have made the application by yourself (not jointly with your husband), and you have children under the age of 18. The court will want to know that proper living arrangements have been made for the children.

What about the kids and the property?

The divorce itself is separate from all the other issues, which need to be sorted out when you separate from your husband. A divorce is the legal ending of your marriage, and is usually the last thing to do when everything else is sorted out. You can make arrangements for the children (such as who they are going to live with, and when they are going to spend time with the other parent), and start to work out how you are going to divide up any property (and debts) as soon as you are separated. You do not need to wait to be divorced to sort out these important matters. You should obtain legal advice about making arrangements for the children, and working out a property settlement with your husband after separation.

See the separate legal information fact sheets for Children and Family Law and for Property Settlement.

Can I change my name after separation?

Yes.

If you separate you can use your married or birth name (maiden name) without officially changing your name. For example if you want to use your birth name you can do so by simply showing your birth certificate to your bank, Medicare, etc.

If you want to change your name officially (to a surname other than your birth name or married name), and you were born or live in Victoria, you will have to apply to the Victorian Registry of Births, Deaths and Marriages. A fee will be charged.

You are not able to change your children's surnames without the agreement of the other parent, or an order of the court.

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Do I have to get divorced?

No.

You can choose to remain legally married, even though you have separated from your husband. You do not have to apply for a divorce, unless you want to re-marry. However, your husband may apply for a divorce even if you do not.

What if I got married overseas?

You can still get divorced in Australia, as long as the court has jurisdiction in your case. The court has jurisdiction if the person applying for the divorce lives in Australia or is an Australian citizen. You will need a copy of your marriage certificate to include with your application for divorce.