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FAMILY LAW: What is involved in a Divorce Application?

When can an application for Divorce be made?

Obtaining a divorce is the legal end to a marriage. Proceedings for divorce are usually commenced after all parenting and/or financial and property matters have been resolved.

Parties to a marriage can apply for a property settlement at any time after separation and prior to divorce. Usually, a divorce takes effect 12 months from the date of issue of the Divorce Certificate. So, as a right, parties usually only have 12 months from the date of issue of the Divorce Certificate to make an application to the Court for a property settlement. After that time, an application for a property settlement can only be made with the consent of both parties or with permission from the Court under strict circumstances. Accordingly, it is advisable to finalise all financial matters before applying for a divorce.

An application for divorce can be made by either party or jointly by the parties to a marriage.

Making an Application for Divorce

To apply for a divorce, you must be in a position to prove all of the following:

- you are married (by providing a marriage certificate or other appropriate evidence of the relationship);
- you have been separated from your former partner for at least 12 months;
- there is no reasonable prospect that you will get back together, and
- you or your spouse are Australian residents or citizens, or regard Australia as your permanent home.

If the above criteria are met, a party or parties to a marriage can file the appropriate Application for Divorce in the Family Court and a certificate will be issued, unless there are issues relating to the care of your children of the marriage who are under 18 years of age. This is part of the reason why it is advisable to resolve all of your parenting and financial arrangements before you apply for a divorce.

What if my marriage was less than two years?

If the parties to a marriage have been married for less than two years, then before filing the application for divorce, the parties must attend counselling with a Court approved counsellor to discuss the possibility of reconciliation. The counsellor will then sign a certificate to confirm that the counselling has taken place. If there are special circumstances, an application for divorce may be filed, seeking leave of the Court to proceed within two years of the marriage, without the need to attend counselling.

Require further information or advice?

For further general information about related topics, browse the range of other information sheets, tools for clients and information updates available on the 'Resources' page of our website.

If you require advice regarding any of the following:

- divorce applications
- property settlements
- spousal maintenance
- child and parenting matters
- making a new Will or power of attorney document to take account of changed circumstances
- buying or selling property

Swanwick Murray Roche can provide timely tailored advice about your circumstances. We can offer professional advice and a compassionate approach when dealing with family and personal matters.

Please do not hesitate to contact us by phone on 4931 1888, email at enquiries@smrlaw.com.au, via our online enquiry form or by any of the other means detailed on our website www.smrlaw.com.au.