

Separated, but living under one roof?

This fact sheet is for spouses (applying for a divorce) who lived in the same home during part or all of the required 12 month separation period. It explains what you need to do and the documents you need to file with the Court.

What is separation under the one roof?

Separation under one roof is when a husband and wife separate but continue to live in the same home. It may be for a few days, weeks, months or years following separation.

If you and your spouse lived in the same home during part or all of the required 12 months separation period, you need to provide extra information to the Court. You need this information before you can apply for a divorce.

EXAMPLE ONE

Separated for 14 months

Lived in the same home for 5 months after separation

Three of the 12 months separation lived in same home

Must provide extra information to the Court

EXAMPLE TWO

Separated for 5 years

Lived in the same home for 3 years after separation

Past 2 years lived in different homes

Do not need to provide extra information to the Court

What documents do I need to file?

If separation under one roof applies to your situation, you need to support your divorce application with an affidavit.

Q What is an affidavit?

A An affidavit is a written statement prepared by a party or witness. It is the main way you present evidence (facts of the case) to the Court. You must swear or affirm the affidavit before a person authorised to witness affidavits; for example, a lawyer or Justice of the Peace. For more information about affidavits, see the fact sheet 'Preparing an affidavit'.

- If you are applying for a divorce on your own, you must file an affidavit yourself. You should also file an affidavit by an independent person; such as, a family member, friend or neighbour.
- If you and your spouse are applying together, you must each file a separate affidavit. If only one of you is able to file an affidavit, then you should file an affidavit by an independent person (see above).

Note – The affidavit by the independent person should contain as much information as they know about the separation.

This fact sheet provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Family Law Courts cannot provide legal advice.

What do I need to prove?

In your affidavit, you need to prove that there has been a change in the marriage, gradual or sudden, showing you and your spouse have separated. You will need to explain any:

- change in sleeping arrangements
- reduction in shared activities or family outings
- decline in performing household duties for each other
- division of finances; for example, separate bank accounts, and
- any other matters that show the marriage has broken down; for example, if you have notified family and friends of your separation.

Your affidavit should also explain:

- Why you continued to live in the same home following separation and what intention, if any, you have of changing the situation.
- Living arrangements you made for any child of the marriage under 18 years during the time you were living under one roof.
- What government departments you have advised of your separation if you receive a government benefit; for example, Centrelink or the Child Support Agency. If correspondence has been received from these departments about your separation, attach a copy to your affidavit.

Do I have to attend court?

If you have made a sole application and there is a child of the marriage under 18 years you must attend the court hearing. In all other instances, provided you set out the circumstances of your separation and file the required affidavits with the Court, you do not need to attend the court hearing. If the Court requires more information, it will adjourn the case and direct you to file additional material or to attend the court hearing.

Legal advice

You should seek legal advice before applying for a divorce. You can seek legal advice from a:

- legal aid office
- community legal centre, or
- private law firm.

Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

More information

For more information, including access to legislation, forms or publications mentioned in this fact sheet:

- go to www.familylawcourts.gov.au
- call 1300 352 000, or
- visit a family law registry near you.