

Divorce application when separated but living under one roof

A marriage breakdown is usually accompanied by a great deal of stress for all involved. Sometimes separation does not automatically lead to one party immediately leaving the family home. Instead, separated couples may remain living together under the same roof following their separation. They may do this for a variety of reasons including a decision to stay under the same roof for the perceived emotional benefit for their children.

The law in Australia recognizes that separation under the same roof occurs. Section 49 (2) of the *Family Law Act 1975* (Cth) states: *“The parties to a marriage may be held to have separated and to have lived separately and apart notwithstanding that they have continued to reside in the same residence or that either party has rendered some household services to the other.”*

To apply for a divorce particular criteria must be established, one of which is that, parties have been separated for a period of 12 months. Where there has been any period of living together under the same roof during this 12 month period of separation, even if it was just for a very short period of time, the Court will need to be satisfied that the 12 month period of separation is established.

This means that where separation under one roof has occurred, additional information will need to be prepared and provided to the Court, along with the application for divorce. Where a sole applicant applies for divorce this additional information will take the form of an affidavit by the applicant who will also have to arrange for another affidavit in support of theirs. These affidavits are then filed with the application for divorce.

An affidavit is a sworn or affirmed written statement. It sets out evidence and it must be witnessed correctly. Either a lawyer or a justice of the peace usually witnesses an affidavit. An affidavit of support provides evidence of separation under one roof. This evidence can be provided from an independent person such as a friend, a relative or a neighbour who is aware of the change of marital circumstances and the separation under one roof. The independent person will need to provide specific information. They will also be required to swear or affirm their own affidavit of support.

We understand that all separation is stressful and we strive to support and guide our clients through the legal process. If you are considering a divorce and have questions regarding separation under one roof or any other family law related matter please telephone our office to make a time for a confidential discussion with our family lawyer about your specific circumstances.

This information is based on Family Court information fact sheets available from the Federal Circuit Court of Australia.
This information is provided as information only and is not intended as legal advice.