



Separated, but living under one roof

FAMILY COURT OF WESTERN AUSTRALIA

This brochure will tell you

About applying for a divorce where spouses 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 separated but still 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. If you do not provide enough information the Court may adjourn your application for further hearing at a later date.

Example One

- Separated for 14 months
- Lived in the same home for 5 months after separation
- Three of the 12 months separation lived in the 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.

What is an affidavit?

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 *Affidavit Instructions*.

- 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. You should also 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.

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 of your affidavit.

Do I have to attend Court?

In cases where it is claimed that parties have lived separately and apart under the same roof during any part of the period of twelve months immediately preceding the date of filing of the application for divorce the Court will ordinarily require corroboration of the claim by the filing of an affidavit by a witness. The witness should attend the hearing in case further evidence is deemed necessary.

Such applications must be listed for hearing in open Court and the applicant(s) should attend the hearing, notwithstanding that the parties may otherwise be entitled to have the matter determined in their absence.

Seek Legal Advice

You should seek legal advice before applying for a divorce. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case.

You can get 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.

Personal safety

If you have any concerns about your safety while attending court, please call **08 9224 8222** before your court appointment or hearing. Options for your safety at court will be discussed and arrangements put in place. By law, people must inform a court if there is an existing or pending family violence order involving themselves or their children.

Need more information?

For more information about the **Family Court of Western Australia**, including access to the legislation, forms or publications listed in this brochure:

- go to **www.familycourt.wa.gov.au**
- call **08 9224 8222** or **1800 199 228**; or
- visit the Family Court of Western Australia registry.

This brochure 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 Court cannot provide legal advice.

The Family Court respects your right to privacy and the security of your information.

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Who else can help?

- **Legal Aid WA**
www.legalaid.wa.gov.au
1300 650 579
- **Community Legal Centres Association of Western Australia**
www.naclc.org.au
08 9221 9322
- **Law Society of Western Australia**
www.lawsocietywa.asn.au
08 9322 7877
- **Aboriginal Legal Services of Western Australia Family Law Unit**
www.als.org.au
08 9265 6666 or 1800 019 900
- **Law Council of Australia – Family Law Section**
www.familylawsection.org.au
02 6246 3788