



Serving an Application for Divorce

A guide to service for divorce applications
FAMILY COURT OF WESTERN AUSTRALIA

This brochure will tell you

How to serve a copy of your divorce application on your former spouse.

- Service by Post;
- Service by personal delivery by another person

General information

If you are applying for a divorce on your own, it is essential that your spouse knows that the application has been made and what you have said in the application. **Service** of the application on your spouse must be done as soon as possible after filing.

The application may be served:

- by post; or
- personally delivered by another person.

Service by post should only be used if your spouse is likely to sign the Acknowledgement of Service (Form 6). If you serve by post and the Acknowledgement of Service is not returned to you, the finalisation of your application may be delayed. It will be necessary to serve further copies of the documents on your spouse by personal delivery.

What documents do I need to serve?

You need to serve two documents:

- the application form;
- AND
- the brochure, “Marriage, Families and Separation”;
 - any other document filed with the court.

Is there a time limit

When you filed your application form with the court, you will have been given a hearing date for when your case will go before a Judicial Officer.

You need to have served the other party

- at least 28 days before the date of hearing, if your spouse is in Australia; or
- at least 42 days before the date of hearing, if your spouse is overseas.

If you are unable to serve the application within these time limits, the application may still be able to proceed on the hearing date if your spouse consents in writing, or your spouse (or their lawyer) attends the hearing and indicates consent.

If your spouse is represented by a lawyer

If your spouse has a lawyer who has been given instructions to accept service of the documents, the lawyer can then sign the Acknowledgement of Service on your spouse’s behalf. The lawyer will then file a Notice of Address for Service. You can contact the lawyer to arrange this.

Service to other countries

For service of the application outside of Australia, there are special requirements in some countries. Registry staff can give you more information.

If you do not know your spouse's address

You may apply to the Court to dispense with service of the application. You can ask registry staff about this, you may need some legal advice.

NOTE: Forms relating to the service documents are available from the registry or the Family Court of Western Australia website (www.familycourt.wa.gov.au). Registry staff will advise you of the correct form to use.

Service by post

Step 1

You should send by pre-paid post addressed to your spouse at their address:

- (1) a copy of the Application for Divorce form stamped by the Court;
- (2) the Family Court brochure "Marriage, Families and Separation";
- (3) the Acknowledgement of Service (Form 6). You should fill in parts "A" and "B" before posting;
- (4) any other documents you have filed with the court (affidavits etc); and
- (5) a stamped self-addressed envelope to enable the signed Acknowledgement of Service to be returned to you. The envelope should be addressed to you at the address for service printed on your application for divorce form.

Step 2

When the Acknowledgement of Service is returned, you should as soon as possible:

- (1) fill in the Affidavit of Service (Form 7);
- (2) swear or affirm the affidavit (Form 7) before a Justice of the Peace. You **must also** take the Acknowledgement of Service with you; and
- (3) lodge at the Court registry the completed affidavit (Form 7) with the attached Acknowledgement of Service (Form 6).

NOTE: You should keep a photocopy of the completed documents for your own reference

Personal Service

Although you may be present when the divorce documents are served, **YOU cannot personally deliver the application to your spouse**. A friend or relative may serve the documents for you, provided he/she is over the age of 18 years. Alternatively a process server or bailiff may be employed to serve your documents for a fee. Process servers are listed in the Yellow Pages telephone directory under the heading of "Process Servers".

Step 1

You should give the person who is going to serve the documents for you:

- (1) a copy of the Application for Divorce stamped by the Court;
- (2) the Family Court brochure "Marriages, Families and Separation";
- (3) TWO Acknowledgements of Service (2 x Form 6). You should fill in parts "A" and "B" before giving them to the server;
- (4) any other documents you have filed with the court (affidavits etc);
- (5) you should also provide the server with an Affidavit of Service (Form 7); and
- (6) if the server does not know your spouse, it is helpful to provide a recent photograph. You should also provide any information as to where you spouse may be located.

Step 2

The server should then visit your spouse and deliver the documents.

If the server does not know your spouse, the server should ask the person being served:

- “What is your full name?”
- “Are you the husband/wife of the applicant?”

The server should ask your spouse to date and sign the two Acknowledgement of Service (2 x Form 6). If your spouse refuses to take the documents, the server may then put them down in your spouse’s presence and tell them what the documents are.

Step 3

The person who served the documents should complete the Affidavit of Service (Form 7) and then staple ONE of the Acknowledgements of Service (Form 6) to the back of the affidavit. He/she should then swear or affirm the affidavit before a Justice of the Peace.

Step 4

If you (the applicant) are familiar with your spouse’s signature, you should then complete an Affidavit of Proof of Signature and attach the Acknowledgement of Service (Form 6) to the back of the affidavit.

You then swear or affirm the affidavit before a Justice of the Peace.

If your spouse did not sign the Acknowledgements of Service (2 x Form 6), the server did not know your spouse, and a photograph of your spouse is not available, then you or another person who knows your spouse and was also present at the time of service should prepare a brief Affidavit confirming that your spouse was the person served.

Otherwise, it will be necessary for a photograph of your spouse to be attached to the Affidavit of Service.

You must then prepare a further brief affidavit (called Affidavit of Proof of Identity) stating the person in the photograph is your spouse.

Step 5

Lodge at the Court registry the completed:

- Affidavit of Service (Form 7); with
- Acknowledgement of Service (Form 6) attached

As well as:

- Affidavit of Proof of Signature;
- Acknowledgement of Service (Form 6) attached; and
- Any other affidavits you have to file (see above).

NOTE: You should keep a photocopy of the completed documents for your own reference

Where do I find a Justice of the Peace?

There is usually a Justice of the Peace (JP) at the Family Court of WA between 9:30am and 1:00pm. If a JP is not available you may find one at the Justices’ Association at 25 Barrack Street, Perth. For a JP near your home, telephone the Justices’ Association on 1300 657 788 or visit their web page www.justice.wa.gov.au.

Seek legal advice

You should get legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can also help you reach an agreement with the other party without going to court.

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 Family Dispute Resolution, or to find your nearest Family Relationships Centre:

- go to www.familyrelationships.gov.au; or
- call the Family Relationship Advice Line on 1800 050 321, the line is open from 8:00am to 8:00pm Monday to Friday, and 10:00am to 4:00pm on Saturdays.

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.

Who else can help?

- **Legal Aid WA**
www.legalaid.wa.gov.au
1300 650 579
- **Community Legal Centres Association of WA**
www.communitylaw.net
08 9221 9322
- **Law Society of Western Australia**
www.lawsocietywa.asn.au
08 9322 7877
- **Aboriginal Legal Service 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

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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