

Have you been married less than two years?

This fact sheet is for spouses who have been married less than two years and want to apply for divorce. It explains what you need to do and the documents you need to file with the Court.

When is the two years calculated from?

The two years is calculated from the date of the marriage to the date of applying to the Court for a divorce.

You and your spouse must also have been separated for at least 12 months before applying for a divorce.

What do I need to do?

If you have been married less than two years and want to apply for a divorce, you must either:

- 1 Attend counselling with a family counsellor or nominated counsellor to discuss the possibility of reconciliation with your spouse.

OR

- 2 If you have not attended counselling, seek permission of the Court to apply for a divorce.

Attend counselling

Before applying for a divorce, you and your spouse must attend an appointment with a counsellor to discuss the possibility of reconciliation. If you need help finding a counsellor:

- go to www.familyrelationships.gov.au, or
- call 1800 050 321

Ask the counsellor to complete a counselling certificate that states he/she has discussed the possibility of reconciliation with you and your spouse.

You can get a blank counselling certificate from www.familylawcourts.gov.au, by calling 1300 352 000 or at your nearest family law registry. Take it to the appointment for the counsellor to complete.

Note: You need to attach the completed certificate to the back of the Application for Divorce when you file it.

If you do not attend counselling

If you do not attend counselling with your spouse, you need the Court's permission to apply for a divorce. You seek this permission by filing an affidavit with your divorce application.

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.

In your affidavit, you will need to explain:

1 Why you and your spouse have not attended counselling.

For example, if you can not locate your spouse, explain the attempts you have made to find them. Or, if your spouse refuses to attend counselling, explain the attempts you have made to invite them to attend.

2 Any special circumstances of your case.

For example, if there is a history of violence and abuse in the marriage and it is not safe for you to attend counselling with your spouse.

For more information about affidavits, see the fact sheet 'Preparing an 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.