



THINKING DIVORCE

Unfortunately, marriages don't always work out. And there are times when parties cannot always resolve their issues, to save the marriage, which means there is sometimes no alternative, except to dissolve the marriage.

Thanks to legislation enacted in the Family Law Act of 1975, there is no requirement for either party to show that anyone was 'at fault', for the marriage not working out. However, before either the Federal Circuit Court of the Family Court can dissolve a marriage, there are certain criteria that must be satisfied.

The Federal Circuit Court deals with the majority of divorce applications. The court must be satisfied that it has jurisdiction to deal with the matter. This will generally involve a party showing proof of Australian citizenship or residence, as well as evidence of there being a valid marriage to dissolve. If it was a marriage that took place overseas, it may also be necessary to provide not only a certified copy of the foreign marriage certificate, but also an English translation of the document, by an authorised translator. There is also likely to be a need to show that the other party has been notified, of the application for divorce.

Where the marriage itself has been short, the court may impose a requirement for the parties to attempt counselling and reconciliation, before a divorce will be allowed.

Criteria for Allowing Divorce

Once the parties to a marriage separate, they will generally be allowed to divorce, provided there is an irretrievable breakdown of the marriage, evidenced by at least twelve months' separation. There are provisions under s.50 of the Family Law Act which allow for any attempts at reconciliation – if the parties live together again but for less than three months, they can add together the months before the

reconciliation attempt and afterwards, to make a total of twelve months.

The court will generally grant a divorce, if they are satisfied that appropriate arrangements have been made for any children under eighteen years old. The order for divorce becomes final, one month after the court makes the order. At this point, both parties are then free to remarry.

It should be remembered that the divorce itself will make no provision for property settlement. The parties must resolve any outstanding property issues themselves. Once the divorce is final, the parties have twelve months to resolve such issues, so it is generally best to deal with the property settlement before divorce.

The divorce will also affect the rights of the former spouse, to inherit under a will. It is therefore strongly advised, that you seek legal advice, not only about the divorce, but also about any will you might have, as these will very likely need to be changed.

It is possible to go onto the Federal Circuit Court website and download the actual divorce application form. It is also possible to ask the court registry staff about the court process itself, however they cannot give legal advice. It is best to seek legal advice, about the effects of divorce and any related issues, such as the care of children and property settlement. A lawyer can give you advice and assistance, to help you negotiate a path through what can be a difficult time in life.

Talk to us. You'll be inspired!

Elizabeth D. Stahlut
Solicitor

Thinking family



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