**Divorce**

Introduction

Divorce officially ends a marriage once it has broken down.

To have a divorce order granted, a married couple must have been separated for at least one year prior to the time an application for divorce is filed, and must satisfy the court that the relationship has broken down permanently.

Where there are children of the marriage under the age of eighteen years, the court must also be satisfied that arrangements for their future care are satisfactory.

Who can apply for a Divorce in Australia?

Divorce may be applied for in Australia if either spouse:

* regard Australia as their home and intend to live in Australia indefinitely, or
* are an Australian citizen by birth, descent or by grant of Australian citizenship, or
* ordinarily live in Australia and have done so for 12 months immediately before filing for divorce.

The Court needs to be satisfied that the parties have lived separately and apart for at least 12 months ***AND*** there is no reasonable likelihood of resuming married life.

It is possible to live together in the same home and still be separated.

What grounds are necessary to be proven to be granted a Divorce?

* prove that the marriage is irretrievably broken, that is, that you have been separated for a period of no less than 12 months
* have lived separately for this 12 month period
* have been married for more than 2 years OR attended the required counselling with the Family Court

What happens if the couple continues to reside under the same roof?

It is possible to prove separation even if you still live in the same house as long as the three elements of separation are present. The action of separating must involve an open and complete break from the marital relationship and may include:

* the ceasing of sexual activity
* living in separate rooms
* operating separate bank accounts
* not sharing meals
* not providing household services
* not sharing mutual entertainment inside or outside the home
* not representing to relatives, neighbours or friends that the marriage is continuing

If the parties contend that they have separated even though they still live under the one roof they will have to give the court evidence of this.

How soon after divorce can someone remarry?

It is illegal to remarry before the divorce becomes final. To do so is an offence (bigamy) and the second marriage is not legal. A divorce will not become final until the expiration of one month after the divorce was granted.

What about children of the marriage?

Where there are children of the relationship under the age of 18 the court might not grant a divorce unless proper arrangements have been made for their care and welfare and those arrangements have to be explained to the Court.

What about children of a previous relationship?

All children that were treated as a family member immediately prior to separation are included as children of the marriage. This includes step children and foster children. The arrangements for all children have to be disclosed.