

I'M PLANNING MY WEDDING BUT I AM NOT YET DIVORCED!

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There is often an expectation that obtaining a divorce is a simple and quick process which can occur as soon as you have separated from your spouse. This is not the case and before you start planning your next wedding in an exotic location you should familiarize yourself with the practicalities of making an application for divorce.

There are a number of preconditions which need to be met before you can make your application. You can only apply for a divorce once you have been separated for a period of not less than 12 months immediately preceding the filing of the application for divorce. This allows the court to be satisfied there is no reasonable likelihood of you and your spouse resuming married life.

Things only become more complicated if you have been married for at least two years. In such "short marriages", you must attend counseling to discuss the possibility of reconciliation with your spouse before you can file an application for divorce. If you are not thrilled with the prospect of attending counseling to discuss reconciliation with someone that you have quite clearly moved on from, you can seek permission from the court to apply for a divorce within this two year period. This is done by filing an affidavit which explains why you haven't attended counseling. There are no guarantees this permission will be granted by the court and, in some situations it is simpler to just attend the counseling or wait out the two years.

Furthermore you or your spouse must also either:

- Regard Australia as your home and intend to live in Australia indefinitely; or
- Be an Australian citizen; or
- Ordinarily live in Australia and have done so for 12 months immediately before filing for divorce.

Provided you satisfy the above preconditions you are then able to file the application form in the Federal Circuit Court of Australia.

Your marriage certificate will need to be filed along with your application. In the event your marriage certificate cannot be located you will need to apply to obtain a new one. This application can be made to the registering authority in the State in which you were married. In Queensland this can take up to 10 business days to obtain.

On the filing of your application for divorce, the court will fix a date for the hearing of your application. The date of your hearing will be determined with consideration given to the type of application to be heard. If it is a joint application, which is an application signed by both you and your spouse, the hearing will be fixed for a date at least 28 days after the application is filed. If your application is not a joint application and provided your spouse is in Australia the hearing will be fixed for a date at least 42 days after the application is filed. If your spouse is not in Australia, the hearing date will be fixed for a date at least 56 days after the application is filed. These time frames may in fact be greater depending on the number of applications received at any given time by the court.

Once the court has heard your application and you are successful, your divorce will become final one month

and one day after the date the Order was made which is generally your hearing date. You can only re-marry once your divorce is final or has "*become absolute*".

For these reasons we urge clients to be mindful of the various time constraints when considering making an application for divorce. If you would like any further assistance with your divorce application, please contact a member of our [Family Law Team](#) for further advice.

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