

Separation under the same roof

How to apply for a divorce if you've been living with your partner while separated



DIVORCE FACTSHEET 3

Living separately under the same roof

What does separation under the same roof mean?

The only legally accepted reason to get a divorce in Australia is that the **marriage has broken down irretrievably**. This means that the court must be satisfied that you and your spouse lived separately and apart for a period of 12 months immediately before the date of applying for a divorce order. If you want to separate but continue to live together in the same home for financial, parenting, or other reasons, this is called 'separation under the same roof'.

Separation under the same roof does not just mean sleeping separately. The [Federal Circuit and Family Court of Australia \(FCFCOA\)](#) requires evidence that either you or your spouse said the relationship was over and, from that time, you did not act like a married couple, but you behaved like a separated person both inside and outside the home.

What if we have lived at the same address for some or all of the separation period?

If you and your spouse have lived at the same address for some, or all of, the 12 months immediately before applying for divorce, you will need to also provide two affidavits describing your separation when you file your application for divorce. An affidavit is a written statement of evidence.

If you are still living at the same address at the time you apply for divorce, you will need to explain what your plans are for living arrangements in the future.

What if we are still living at the same address at the date of the divorce hearing?

If you are both living at the same address at the date of your divorce hearing or intend to keep living in the same home, the court might not grant your divorce. **The FCFCOA cannot grant a divorce order if there is a reasonable likelihood that your relationship will resume.**

Showing the Federal Circuit and Family Court of Australia (FCFCOA) you have separated

In your application for divorce, you will need to record the date of your separation as well as any periods of time that you lived in the same house as your spouse, since the separation date.

The court will need two affidavits to confirm you and your spouse were truly separated while still living together under the same roof.

Each person who writes an affidavit must be prepared to come to court. They may be examined about the truth of their statement if the court requests this.

You must file the affidavits at the court registry counter or electronically on the Commonwealth Courts Portal (www.comcourts.gov.au). For more information about how to do this, see *Factsheet 4: Filing your divorce documents online*.

If you are applying on your own (sole application for divorce)	If you and your spouse are applying together (joint application for divorce)
<p>You must prepare and file two affidavits:</p> <ul style="list-style-type: none"> ● one written by you and ● one written by another person who has seen or heard about you and your spouse being separated under the same roof (usually a family member or friend). <p>You must serve both affidavits on your spouse with your divorce documents.</p>	<p>You must prepare and file at least two affidavits. This can be:</p> <ul style="list-style-type: none"> ● one each by you and your spouse or ● one from either of you and a third person who has seen or heard about you and your spouse being separated under the same roof (usually a family member or friend).

Writing your affidavit

An affidavit is your evidence put in a written statement which explains that you and your spouse have been living separately under the same roof. It must explain what the relationship was like before the separation date and how it changed after your separation date.

Each marriage is different, so the information needed to prove that you were separated under the same roof will be different in each case. This sample affidavit has many possible sentences. Delete any that are not appropriate and include more information where necessary. You are the Applicant and your spouse is the Respondent.

SAMPLE AFFIDAVIT:

1. I am the Applicant *Husband/Wife* in these proceedings.
2. I was born on *[full date of birth]* in *[location]* and I am *[XX]* years of age. *I came to Australia on or around [year] and I am now an Australian citizen (or state your migration status).*
3. The Respondent *Husband/Wife* is *[full name]* (Write the name of the Respondent and then use this name throughout the Affidavit where it says 'Respondent'). *[Respondent] was born on [full date of birth] in [location] and is [XX] years of age and is also an Australian citizen.*
4. *[Respondent]* and I met around *[date]* and were married on *[date]* in *[location]*.
5. *[Respondent]* and I separated on a final basis on *[date]*, and we continued to live at the same address at *[address]* from *[date]* to *[date]* until he/she/I moved out to *[address]*.
6. There are *[X]* child/ren of the marriage. They are *[list full names and dates of birth and current ages for each child of the relationship, including stepchildren]*.

Our marriage before separation

7. During our marriage, I cooked for *[Respondent]* and washed and ironed their clothes (*describe any other household tasks you shared or did for each other whilst together*).
8. *[Respondent]* and I would visit friends and sometimes they would come to our home (*give examples*).

9. We also travelled as a family (*give examples*).
10. We (*had, have*) a joint bank account and we (*bought/rented*) our home in our joint names.
11. During our marriage, we slept in the same bed and had a sexual relationship/we had been living in separate bedrooms under the one roof for many years.

Marriage after separation

12. Describe what happened on your date of separation. Did you have an argument on the telephone? Did you have a discussion and decide how to tell the children and family and friends? Were police or family members involved on that day? Did you write text messages or emails saying the marriage had ended? State the facts as best as you can remember. If you are reporting a conversation use direct language, e.g.

On *[date]*, *[Respondent]* and I were at *[location]* and I remember we had a conversation with words to the effect of:

Me: "This isn't working, our marriage is over."

[Respondent]: "I agree. I will move my stuff into the spare bedroom until I can find my own place."

Use the words that you each said (as far as you can remember) to show that you believed each of you knew the marriage ended on that date.

Then, explain how the relationship changed from what it was before. For example:

13. Since the date of separation *[Respondent]* moved into a separate bedroom.
14. I continue to cook for our family but *[Respondent]* eats separately and often eats out of the home.
15. I have stopped washing and ironing *[Respondent]*'s clothes and doing other household chores for *[Respondent]*.
16. Since separation, I have done my own shopping and washed my own clothes.
17. *[Respondent]* and I no longer socialise as a couple and do not visit friends together or celebrate family occasions like Christmas or birthdays together.
18. *[Respondent]* and I have separate bank accounts and we split all our bills for the children.
19. *[Respondent]* and I do not usually speak to each other unless it relates to the *[children/household bills/discussions about moving]*.
20. Around *[date]*, I told my close friend *[friend's full name]* who lives in *[location]* that *[Respondent]* and I had separated. I remember I said words to the effect of "*[Respondent]* and I have decided to separate since last month. I moved out to the spare room and I need to find a new place to stay."
21. Since we became separated under the same roof, *[Respondent]* and I have not spent time or socialised with each other except for the children's birthdays. Sometimes we have done things together for the home but it was as housemates, not as a husband and wife.
22. When we separated I told Centrelink/other agencies about the separation. *Describe how you informed Centrelink or other agencies about the separation.*

Also describe when you or the other person moved out. For example:

23. On *[date]*, I moved to *[new address]* and *[Respondent]* and I divided our things. We are currently working out a financial settlement between us with lawyers.

Or, if you can't move, explain why you are still living under one roof.

Both *[Respondent]* and I receive Centrelink income and have applied to the Department of Housing to find new accommodation. I have looked at the rental properties available that are near to the children's school, but they are [\$dollars] per week and I only receive [\$dollars], so I cannot afford to move out yet.

Preparing a third-party or witness affidavit

You will need another person's affidavit to support your statement about living separated under the same roof. If you are making a joint application for divorce, the second affidavit can be from your spouse. If you are making a sole application, you could ask any person over 18 years old. This can be a friend, family member, co-worker or any other person who has known you during the marriage and after the separation.

The third party or witness will have to explain in their affidavit what they experienced themselves, first hand, about you and your spouse's separation.

This template guide affidavit has many sample sentences. Delete any that are not appropriate, and include more information where necessary.

SAMPLE OF THIRD-PARTY OR WITNESS AFFIDAVIT:

1. I am the best friend/cousin/doctor/co-worker (*describe your relationship*) of the Applicant *[name you call the Applicant]* in this matter. I have known *[Applicant]* for *[how long?]*.
2. I was born on *[full date of birth]* in *[location]* and I am *[XX]* years of age. I came to Australia on or around *[year]* and I am now an Australian citizen (or state your migration status).

Describe how you met the *[Respondent]* and, if you attended the wedding, and how often you spent time with the couple after they were married. For example:

3. I often visited my friend *[Applicant]* at home. I was their wedding photographer. Our children are the same ages and attended the same schools so we met almost every day.
4. When I visited their home, I noticed that both *[Applicant and Respondent]* would cook together. I noticed they were sharing a bedroom when we travelled together.
5. Around *[date]*, *[Applicant]* came over to my house looking upset and said words to the effect of "*[Respondent]* and I decided to separate last month. I moved out to the spare room and I need to find a new place to stay."

Describe what you have personally seen, heard or been told about the separation. For example:

6. I have not directly spoken to *[Respondent]* about what happened since they separated. I remember I said words to the effect of "I was sorry to hear what happened, I'm here if you want to talk".
7. Since their separation, I have visited *[Applicant]* and *[Respondent]* has not been around when I have visited their home.
8. When I visited the home, I observed *[Respondent's]* clothes and computer in the spare room, with blankets and a mattress on the floor. *[Applicant]* said words to the effect of "I cook and clean for myself now".

9. A few months ago. I attended a friend's wedding and I saw that [Respondent] attended and the bride told me words to the effect of "I couldn't invite [Applicant] because everyone knows they just separated."
10. I understand from my observations and conversations with [Applicant/Respondent] that they live separately and apart in the same home.

Tips for writing an affidavit

- Divide the affidavit into numbered paragraphs.
- Keep each paragraph short and deal with one issue per sentence only.
- Be specific. State who, what, when, where and how. Provide exact dates wherever possible.
- If you can't be exact, make your best estimate.
- When you are writing about what someone said, put it in quotation marks and use the phrase 'words to the effect of'. For example, you may write: Sam said to me words to the effect of "That's fine."
- If you attach a document, refer to it in your affidavit and then write: 'Annexed and marked with the letter 'A' is a copy of [DOCUMENT NAME]' Write the letter 'A' at the top of the front page of the document you are attaching. Each document you attach to your affidavit must be identified by letters A, followed by B, then C, and so on.
- Sign the bottom of each page of the affidavit in front of a Justice of the Peace (JP) or lawyer and complete and sign the 'jurat' at the end of the affidavit. This is the statement that sets out when, where, and before whom you have signed the affidavit.
- If you have attached a document (annexure) to your affidavit, make sure the JP or lawyer who is witnessing the affidavit signs each document.
- If you need to correct any errors, cross out the error and put your initials next to the change. The JP or lawyer who is witnessing the affidavit must also put their initials next to the change.

Need help?

LawAccess NSW

LawAccess NSW is a free information service run by Legal Aid NSW. Anyone who has a legal problem in NSW can contact LawAccess NSW for legal help.

Click on the Chat with us button at www.legalaid.nsw.gov.au or call **1300 888 529** between 9am and 5pm, Monday to Friday (excluding public holidays).

Early Intervention Unit

The Early Intervention Unit is a Legal Aid NSW specialist service resolving family law issues before they get serious. They provide free family law services at courts and community organisations throughout NSW.

Call **1800 551 589** or visit www.legalaid.nsw.gov.au/my-problem-is-about/my-family-or-relationship/parenting/early-intervention-unit.

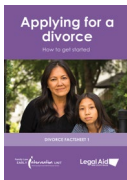
The Federal Circuit and Family Court of Australia (FCFCOA)

You can get further information about court processes, forms, publications and Do-It-Yourself kits on the FCFCOA website www.fcfcga.gov.au. You can also visit www.fcfcga.gov.au/enquiries-hub to speak with someone via live chat or submit an enquiry. If your matter is urgent or requires time critical intervention, call **1300 352 000**.

Public libraries

Public libraries have computers and scanners. You will need to make an appointment. See www.nswnet.net/libraries.

There are five factsheets in the divorce series:



Factsheet 1
Applying for a divorce
How to get started.



Factsheet 4
Filing your divorce application online
How to eFile your divorce application on the Commonwealth Courts Portal.



Factsheet 2
Serving your divorce documents
How to give your divorce documents to your partner.



Factsheet 5
Serving divorce documents when your spouse is in prison
Special rules for giving divorce documents to your partner when they are in prison.



Factsheet 3
Separation under the same roof
How to apply for a divorce if you've been living with your partner while separated.

This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing, however it may change. For more information contact LawAccess NSW on **1300 888 529**.



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For more information, visit: www.legalaid.nsw.gov.au

Do you need help to contact us?



If you need an interpreter, call the Translating and Interpreting Service (TIS National) on **131 450** (9am–5pm) and ask for LawAccess NSW.

Do you find it hard to hear or speak?



If you are deaf, or have a hearing or speech impairment, contact us through the [National Relay Service \(NRS\)](#). Ask for LawAccess NSW on **1300 888 529**.

