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HOW TO GET A DIVORCE

A question that we often receive from clients is 'How Do I Get a Divorce?'

The only ground to apply for a divorce (dissolution of marriage) is that the marriage has broken down irreconcilably. The question is one of fact only and there are no issues of matrimonial fault to be explored.

The Family Proceedings Act 1980 allows a dissolution to occur *"only where the Court is satisfied that the parties to the marriage are living apart and have been living apart for the period of two years immediately preceding the filing of the application for an Order Dissolving the Marriage"*.

An Application for Dissolution of Marriage may be made by either party to the marriage or jointly by both parties to the marriage.

It is a significantly simpler and quicker process to file a joint application whereby the husband and wife both acknowledge that the marriage is at an end.

However, either, or both parties, can undertake the dissolution of their marriage by preparing and filing an application in the Family Court. When making the application, the applicant has the choice of having the application dealt with by the Registrar without an appearance, or having it dealt with in Court. It is generally easier not to have to appear in Court, and the applicant will need to swear an Affidavit confirming their statements as being true and correct.

One of the parties to the Family Court proceedings must live in New Zealand; essentially New Zealand is the 'permanent headquarters' of one of the parties.

At the time of filing the application, the parties must have been living apart for a period of two years. It is important to establish as near as possible the exact date that the parties commenced living apart, and if there has been an attempted reconciliation since that date, this should be included in the application.

If a Court Separation Order or an Agreement to Separate has been signed, a copy is to be attached to the application

If a joint application is filed, the Court deals with the matter within a very short time, perhaps within a few days, depending on work load, and an order will be made relatively quickly.

Where an application has been made by one party, the other party must be served with a copy of the application by a process server, who must also file an Affidavit of Service.

Service of the documents must be effected upon the other party at least 21 days before their Court date, this is to allow the respondent time to take any steps that they may wish to such as seeing his or her solicitor.

After service if there is no objection to the application, the Family Court will issue an Order of Dissolution of Marriage and both parties will receive a copy.

If you require any assistance in preparing an Application for Dissolution of Marriage, or require any other further advice in this area, do not hesitate to contact us.

- The next newsletter will cover the topic of Sham Trusts in the Family Court—by Lloyd Collins