

When the marriage comes to an end

Following the separation of a married couple (or civil union partners), the proverbial knot cannot be untied until they have been living apart for at least two years.

You cannot apply for a divorce – known as a dissolution of marriage – in New Zealand until that two-year period has passed.

To apply in New Zealand, one of the parties to the relationship must live in New Zealand.

That means that for at least one of the parties, New Zealand must be their ordinary place of residence or their place of origin.

It is possible to be living in another country and still be “domiciled” in New Zealand – for example, if someone was working overseas for a few years, but intended to return to New Zealand to live.

Once a couple have been living apart for two years, to dissolve



LEGAL MATTERS

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their marriage they must file an application with the Family Court.

That application can be filed jointly (they both sign the necessary documents) or one party can apply (and the other person needs to be personally served with a copy of the documents).

An application to the Family Court requires three documents to be filed:

1. An application form.

2. An affidavit – a document the person signing must confirm on oath is true and correct. This can be signed in front of a Justice of the Peace, a lawyer or registrar at the court).

The original marriage/civil union certificate or a certified true copy must be attached to the affidavit.

3. An information sheet, setting out contact details and information about both parties.

A fee must also be paid to the Family Court when the application is filed. That fee is currently \$211.50.

For a dissolution application, it is possible to have been “living apart” while still living in the same house. If the parties can show that their relationship was at an end, perhaps living in separate bedrooms, they could still be held to be living apart.

Even though a dissolution application cannot be made for at least two years, a separated couple can still divide their relationship property and resolve matters such as financial support between them well before that two-year period.

To have a binding agreement about property matters, both parties will need to obtain independent legal advice about the division of their property.

Any agreement a couple may reach regarding the division of their property will not be binding unless they comply with the following formal requirements:

1. The agreement reached is in writing and signed by both parties.
2. Each party's signature is witnessed by a lawyer.
3. The same lawyer who witnesses the signature must pro-

vide that party with independent legal advice as to the effects and implications of the agreement.

4. That lawyer must certify, by signing a certificate on the agreement, that they have provided that independent advice.

These requirements mean that each party must have a separate lawyer.

Part of the process of dividing relationship property will involve each party disclosing to the other all their assets and debts, whether they consider those to be joint assets/debts or separate.

It is a good idea for people separating to get early advice so that they are aware of the process and what their rights/obligations might be.

■ Column courtesy of Rainey Collins Lawyers, ph 0800 733 484. If you have an inquiry, email Alan on aknowsley@raineycollins.co.nz.