

## **SEPARATION - "UNDER THE ONE ROOF"**

There is often a misconception that separation can only occur on the date that a partner decides to move out of the home, but in many instances this is not the case. In these days of Global Financial Crisis, it is more common for couples to separate but still continue to live together in the same household. Such a situation may arise for a variety of reasons including, assisting with the care of any children involved, both parties may not want to move out of the home if it is jointly owned or it may be more economically viable to continue living together for the time being. This raises the question – How then does the Court determine whether there is separation in the same household?

### **WHAT IS SEPARATION?**

In determining whether separation has occurred, the Court will look at:

- The development of an intention to separate – the intention need not be mutual;
- An unconditional and clear communication of that intention by one partner to the other;
- An action by one or the other partner upon the forming of the intention to separate.

On this issue, the court has noted that "... the evidence should examine and contrast the state of the marital relationship before and after the alleged separation."

### **ONE HOUSE – TWO HOUSEHOLDS**

If separation has occurred and the parties continue to live together, what more needs to be shown if the date of separation is being disputed?

The Court has said that there must be some "overt separation, some evidence that there are two households, not one." How can this be shown? The partner wanting to prove that separation has occurred while still living together will need to provide evidence such as, the following:

- There has been a change in sleeping arrangements;
- Decline in performing household duties for each other;
- Separate finances, such as separate bank accounts;
- Reduced family and social outings together;
- Any family members and friends that can confirm they are aware separation has occurred (i.e. that the two spouses are living separate lives).

If a party wants to file a Divorce Application, an Affidavit will need to be prepared and filed by a third party (i.e. a friend, or relative, who knows the couple and their lives well) providing evidence of this kind. The circumstances of why the parties continued to live together after separation should also be explained. It is important to obtain Specialist Family Law advice, as every situation is different.