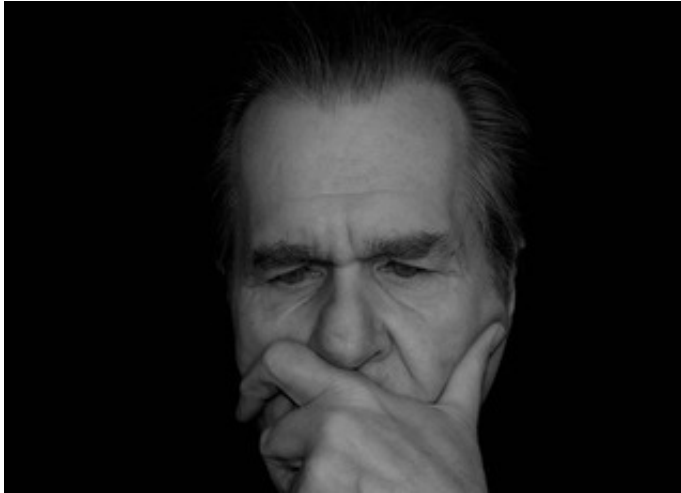


"Am I Separated?" « Michael Lynch Family Lawyers Brisbane

"Am I Separated?" 16 August 2016



You may be thinking this is a strange question, but the fact is that in almost every matter we are involved in the couple disagrees on their date of separation. This may sometimes be inconsequential, such as a few days or a week but quite often it is a much longer period. The Family Court recently considered a disputed date of separation that was 6 years apart!

What is Separation?

Separation in the context of Family Law is when either the married or defacto partnership breaks down. Separation requires a degree of communication. This means that either both parties agree that the relationship has ended or one party communicates to the other that they consider the relationship over. Whilst literally separation is a physical parting, in the Family Law context it can also include circumstances where the parties continue living in a common residence referred to as "separation under the one roof".

separation under the one roof:

There is no legal obligation (barring a Court Order to the contrary) that requires a party to leave the home on separation. In fact often parties will remain under the same roof in the intervening period until such time as issues relating to children and/or property are resolved.

Am i able to divorce whilst separated under the one roof?

Yes, provided you meet two conditions. Firstly, the married couple must be separated for a period of not less than 12 months and secondly, they will need to provide an affidavit from a third party which states that despite living under the one roof they are in fact separated.

can i get divorced sooner if we are living separately and apart?

No, you are still required to meet the first condition, which is separation for a period of at least 12 months.

what happens if we reconcile for a period of time?

If there is a reconciliation period of more than 3 months then the 12 month time period required for a divorce will restart. If the reconciliation period is 3 months or less parties may rely on the earlier separation date.

do I have to give a reason for separation?

No. In bygone days the Court required married couples to provide a fault-based reason for separation should they wish to divorce, these days however, the sole and only reason for separation is an "irretrievable breakdown" of the marriage.

how is separation different for defacto couples?

The fundamental difference is that defacto couples do not need to divorce, so the 12 month time period does not apply. Like married couples, defacto couples can continue to live separated under the one roof.

do I have to wait 12 months to sort out our property and child matters?

No, in fact we would recommend that you seek legal advice and commence the process of settling property and children's matters immediately.

What steps should i take if i intend to separate?

Whilst it is not always possible, it is highly recommended that a party seek legal advice before separation. Often many of the legal pitfalls of separation can be avoided if a party is armed with the necessary knowledge and have in place a plan for moving forward. Once this advice is obtained it is important to communicate to the other party that separation has occurred so that there can be no dispute as to the date of separation. This step is particularly important should a party choose to remain living under the one roof.

If you have any questions about this article or would like to make an appointment to discuss your personal circumstances, please telephone us on 3221 4300 or emails us at law@mlynch.com.au.

